S. Kanara 1/51

1951

Examined

File No.

Legal DEPARTMENT

E BRANCH

Subject:— Suits... Kanara

C. S. No. 89 of 1950.

V. U Shenvi ——— Plff

V/s

The Union of India --- Deft.

P. 106 E...

File No. S Kanara 1/51

Std. Sectt. Slip 24-B

1/51

C O N T E N T S.

Legal Department File No. S. Kanara 1/51

Sr.No.	R.I./O.No.	Subject	Pages.

Suits . Kanara

C. S. No. 89 of 1950

V. U. Shenvi

Vs.

Union of India

Re: For recovery of Rs. 2400 with future interest at 6 per cent by way of compensation in respect of damage caused to the plff's lorry in collision with a Military Vehicle.

1-106

In the Court of the Civil Judge, S.Dn.,
Karwar.

Civil Suit No.89 of 1950.

Venkatrao Upendra Shenvi, age 50, Hindu, Contractor & Motor Bus owner, residing at Ankola, District: North Kanara, Bombay State. } Plaintiff

V e r s u s

The Union of India ... ... Defendant.

Claim: Rs.2,400/- for all purposes.

Plff begs to state as follows:-

1. Plff is owner of Motor Truck No.BYX.590 he was plying the said truck for hire and had engaged one Abdul Khadar Shaikh Ahmed as his driver at the time of the accident. He has obtained a licence for public conveyance for the said vehicle.

2. The said driver, Abdul Khadar, was driving the said vehicle on Karwar-Bellary road on business on 10-2-1948 i.e. at the time of the accident. At mile No.33-7, on Karwar-Bellary Road at Sunksal village, Ankola Taluka, the Govt. military Truck i.e. W.D. Vehicle No.482744, was coming from Karwar side and was proceeding to Belgaum. Both the trucks were being driven in opposite directions down a slope. The said military vehicle which was being driven at a high and reckless speed collided against Plff's vehicle No.BYX. 590 and caused heavy damage to the plaint vehicle. At the time of the accident Plff's driver was on his proper side but the Govt. military truck driver was on the wrong side and though Plff's driver applied brakes and stopped the plaint vehicle the military truck dashed against the plaint vehicle and caused the accident complained of. The alleged accident was caused solely due to the negligent and rash act of the military driver in the

course of duty.

3. Thereafter a Criminal Case No.75 of 1948 was filed against the driver of the plaint vehicle i.e. Abdul Khadar Shaikh Ahmed for causing the accident above mentioned, in the Court of the First Class Magistrate, Ankola, by the Police. After going through the evidence and after making complete enquiry the learned Magistrate honourably acquitted Plff's driver on 22-11-1948 and during the course of his judgment he has also held that the driver of the military vehicle was responsible for the cause of the accident.

4. Plff had to spend Rs.1,880-10-0 for repairs to the plaint vehicle as the accompanying bill of the firm where repairs were carried out, proves. Besides the vehicle had to be kept idle from 10-2-1948 to 28-2-1948 i.e. for 17½ days, during the period it was undergoing repairs. Plff had to lose Rs.613-8-0 at the rate of Rs.35/- per day which amount he was receiving under the terms of the agreement with his contractor at the time of the accident. Thus he is entitled to receive Rs.2,494-8-0 from Deft. But Plff gives up his claim to the extent of Rs.94-8-0 and claims Rs.2,400/- only from Deft.

5. After the termination of these criminal proceedings Plff vainly tried to settle the suit claim with the military authorities out of Court. But the military authorities embarked on a rambling inquiry and though Plff supplied them with proofs and documentary evidence as required by them the end of their enquiry did not appear in sight. Hence Plff served the Union Govt. of India with notice under Section 80, Civ.Pro.Code on 6-2-1950, which was received by the Secretary to the Defence Dept., Union Govt of India on 10-2-1950. Even after the receipt of the said notice, nothing was done by Deft to settle the claim of Plff. Hence Plff was compelled to file this suit for recovery of damages from Deft.

6. Cause of action for this suit arose on 10-2-50 at Sunkasal village at mile No.33/7, Ankola Taluka where the accident occured which is within the jurisdiction of this Court. This Court has, therefore, jurisdiction to entertain this suit. The legal notice of suit having been served upon the Deft on 4-2-50, the two months period of the said notice has

has to be excluded from the prescibed period of limitation. The suit ought to have been filed on 10-4-50 but the Court having been closed on that day till to-day on account of the Easter Vacation, the suit filed to-day i.e. the re-opening day is in time.

7. Valuation of this suit for purposes of Court fees and jurisdiction is Rs.2,400/-.

8. Plff, therefore, prays:

That the Deft be ordered to pay Plff Rs.2,400/- as detailed in para 4 above with future interest at 6 per cent per annum from date of suit till date of recovery with all costs of the suit.

Valuation for this relief Rs.2,400/-

That such other reliefs as the circumstances of the case may require may also be granted.

Ankola,
9-4-1950.

Sd.V.U.Shenvi.

I, Venkatrao Upendra Shenvi of Ankola, Plff in this suit, do hereby declare that the contents paras 1 to 8 of this plaint, are true to the best of my knowledge and belief, in witness whereof I have signed this at Ankola this 9th day of April, 1950.

Sd.V.U.Shenvi.

Presented.
12th April, 1950.

Sd.P.M.Prabhu.
Pleader for Plff.

7 - 4

Kanara Civil Suit No. 89/50.

A.F.

1) This is a suit against the Union of India for recovery of Rs. 2400/- with further interest by way of compensation in respect of damage caused to the plaintiff's lorry.

2) The suit is defensible.

3) The defence of the suit may be sanctioned on the lines of the accompanying brief.

DMG
17/5

Solicitor (M. L.) approved as corrected

PR
17/5

From

URGENT
LEASE.

The District Government Pleader, Kanara.

To

A

The Remembrancer of Legal Affairs, Bombay

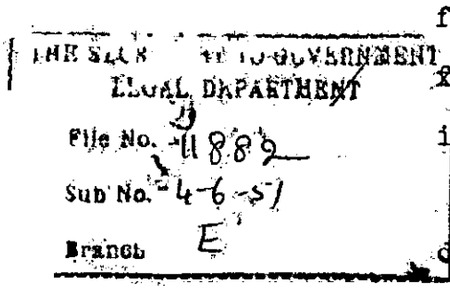
Subject:- Civil suit No. 89-1950 against Union of Indian

No. 25 of 1951. Army Karwar, / -6- 1951.

Sir

I am in receipt of your letter No.8219 dated 24th instant forwarding papers in O.S.No.89-1950. After going through the papers and the grounds of defence supplied by you and also after studying the Rulings on the point I have drafted the written statement, a copy of which has been sent herewith. This may be approved and returned early. The case is fixed on 6th June for filing a written statement and I will apply for a short adjournment.

On going through the papers I find that there is a direct conflict between the sketches prepared by the Military officers and the P.S.I. of Ankola regarding the position of the two trucks and the marks of the tyres etc. It appears that the Military Authorities in the truck had not waited till the police arrived for drawing up the panchnama. The positions of the two lorry trucks have therefore been conveniently mentioned in the panchnama favourable to the plaintiff.



On going through the papers I find that the driver was a Civilian and that the truck had come to Karwar for the Recruiting purpose. It was not engaged in any Military manoeoures. Therefore the question at issue will be as to whether a truck carrying military officers for recruiting purpose can be said to be engaged in a sovereign act.

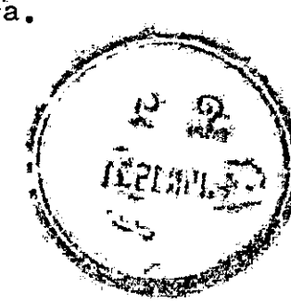
In the papers sent to me I find many of them are copies. I have therefore written to the military officers to trace the original papers referred to in the order of the Court of enquiry and send them on to me early. As the suit is year old it will be fixed for early hearing. Some of the Rulings show that a preliminary

ANX

eliminary point can be raised that the plaint has to be rejected if it does not disclose cause of action against the Union Government. I may therefore please be informed whether I may take up this as a preliminary issue. A

Yours faithfully,

District Government Pleader, Kanara.



D.G.P.

Please see the letter from Govt.

forwarding the Draft

Draft issues the necessary

ground of Defence D.G.

Now, please also the draft issues

the Govt. proceed as at "A"

Pleader

5/6

Advocate (Govt.)

The draft issues submitted by the

D. G. Pleader are approved. The D.G.P.

may also be directed to take

Board the defence in the G.O.S

& not to take defence No. 11

only as the preliminary defence

is sufficient by itself as at A

above

5.5.46

Sub (Govt.) OK

5.5.46

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, KARWAR.

Civil Suit No. 89-1950. 11 64.

Venkatrao Upendra Shenvi ...Plaintiff.

Versus.

The Union of India ... Defendant.

WRITTEN STATEMENT PUT IN ON BEHALF OF THE DEFENDANT:

1. The contents of plaint in para No.1 are not admitted.

2. It is admitted that there was an accident on 10-2-1948. But it is not admitted that the Military vehicle No.482744 was being driven at a high and reckless speed or that the driver was negligent. It is not admitted that the plaintiff's driver was on his proper side at the time of his accident or that the driver of the Military Truck was on the wrong side. It is also not admitted that the plff's driver had applied brakes and stopped his vehicle and that the Military Truck dashed against the plff's vehicle and thus caused the accident complained of. It is not admitted that the alleged accident was caused solely due to the negligent and rash act of the Military driver, in the course of his duty, as alleged by the plaintiff. All the allegations made in plaint in para No.2 are denied.

3. The allegations made in para No.3 of the plaint are not admitted. The defendant nor the driver of the Military truck was a party to the proceedings in criminal case No.75-1948 decided by the First Class Magistrate of Ankola. The judgment of that court is not admissible in evidence in the present suit. The grounds of acquittal and the remarks made by the Magistrate are incorrect and cannot be relied upon by the plaintiff in this suit. The finding of the Magistrate cannot ~~from~~ form the basis of this suit nor can it be relied upon as a relevant evidence against the deft in this suit.

4. It is not admitted that the plff had to spend the sum of Rs.1880-10-0 for repairs of the plaint vehicle as alleged in plaint para No.4. There was very slight damage caused to plff's vehicle.

63 13

5. It is not admitted that the plaintiff's vehicle had to be kept idle from 10-2-1948 to 28-2-1948 i.e. for 17 and half days or that the veicle was undergoing repairs during the whole perio. In fact such a long period was not necessary for effecting the alleged repairs. It is therefore not admitted that plff had to lose Rs.613-8-0 at the rate of Rs.35/- per day. The claim for repairs and damages is highly imaginary and very excessive.

6. The plff cannot rely upon any corresponde which he had carried on with the Military Authoritie as he did so " without prejudice" and also because the deft did not promise any relief to the plaintiff. There was just an enquiry for full details.

7. The notice alleged to have been issued und section 80 C.P.C. is defective and invalid. It was not necessary to send any reply to such a notice. The plaintiff cannot rely upon it. The present suit based upon such an invalid notice is not maintainable.

8. This suit is not against the driver. He is not a party to the present suit. The plaintiff claims relief only against the Union Government His proper remedy was to file a suit against the driver himself, if so advised. The act complained of is alleged to be the result of negligent and rash driving of the Military driver. If so it was an illegal or wrongful act of the driver and the defendant is not responsible for such an act.

9. In fact, enquiry held by the Government discloses that the accident was due to criminal negligence of the plff's driver. Therefore plff cannot claim any damages from the defendant.

10. It appears that both the trucks were being driven in opposite directions. There was only a gentle decline. At this point there was also a curve or a be

15—65

It appears that owing to a hill feature on the left of the driver, his visibility was limited to his immediate front. When he was just getting out of the bend in the road the plaintiff's truck came in from opposite direction and it was almost in the centre of the road. He had not sounded any horn nor had he applied brakes The plaintiff cannot claim damages unless he proves that there was no contributory negligence on the part of his driver. In any case it appears that plff's driver had not taken all necessary precautions to avoid the accident and thus it can be said to be a case of contributory negligence, if not a case of negligence on the part of the plaintiff's driver.

11. Neither the notice nor the plaint discloses any cause of action against the defendant. ~~for the purpose of fastening the liability on the present defendant~~. The contents of plaint para No.6 do not specify the grounds on which the liability of the deft has been sought ~~for~~ by the plaintiff. Hence this suit is not maintainable, as the plaint does not disclose a cause of action against the present defendant. This point will have to be tried as a preliminary issue and the plaint will have to be rejected.

12. At the date of the accident, Government of India Act 1935 was in force. The liability or otherwise of Government of India will therefore be governed by the provisions of that Act. The suit as now framed against the Union Government is not maintainable.

13. The Military truck was plying for Military purpose. It had not been ordered to so ply by any direct order of the Government. But such plying was one of the functions of the Military carried on in the exercise of Government's sovereign powers. The defendant is not liable for such an act done in exercise of " sovereign right," even if the Military driver was negligent.

14. The principles of master's liability

17

for the act of his servant does not apply to the Crown or the State. The defendant is not liable unless the plaintiff had suffered any damages due to an act directly ordered by the defendant or ratified by the Government. There is a clear distinction between acts which are comercial in their nature and those which are administrative functions of the State. Therefore this is not a case where defendant can be held responsible for the act complained of.

15. The driver in question was engaged by the military Authorities. He was properly qualified for the post. He was acting under the orders of the Military Authorities. At the time of the accident he was engaged in military work. These are ~~xxxx~~ sovereign acts and therefore defendant is not liable for the acts of negligence or rash driving.

16. The defendant is not responsible for any act of misfeasance or wrongs or negligence of its subordinates.

17. The plaintiff's truck was insured against third party's risk with the British India General Insurance Company., Bombay. The plaintiff has therefore no cause of action for ~~xix~~ this suit against the deft.

18. The claim is not in time.

19. The plaintiff cannot claim future interest

District Government Pleader.

I, B.S.Mavinkurve, District Government Pleader do hereby declare that the contents of this written statement are true according to the information received and believed to be true. This verification is made at Karwar on 1951.

District Government Pleader.

True Copy'

19 25

In the Court of the Civil Judge, Senior Division, Karwar.

O.S.No. 89-1950.

V.U.Shenvi Vs. The Union of Indiam.

ISSUES.

1. Whether plff proves that the deft's driver caused the accident due to rash and negligent driving ?

2. Whether deft proves there was contributory negligence on the part of Plff's driver?

3. Does plff prove that the deft is liable for the accident committed by the driver?

4. Does deft prove that he is not liable for ~~x~~ reasons alleged in paras 12 to 17 of the W.S.?

5. Whether the plaint and the notice given under section 80 disclose any cause of action against the deft ?

6. If not, is the suit maintainable ?

7. Whether the notice ~~x~~ issued under section 80 is legal and valid ?

8. To what damages is plff entitled to ?

9. What order ?

Karwar, dated 16th July 1951.

'True Copy'

B Sen

D.G.P.Kanara.

From

The District Government Pleader, Kanara.

To

The Rememprancer of Legal Affairs, Bombay.

No. 569 of 1951 Karwar, dated 19th October 1951.

Sir,

Subject:- O.S.No.89-1950 filed by Venkatrao Upendra Shenvi against the Union Government

The above suit has been filed for recovery of damages against the Union Government on the ground that a Military vehicle was being driven by the driver rashly and nigligently, As a result of which there was an accident and plff's motor truck was damaged. Issues have been framed and the suit has been fixed for hearing on 12-11-1951. In the meantime the plff's pleader has made a proposal to me today for settlement of the claim at 50% of the total claim. The suit is filed claiming Rs.2400/-. So the plff's pleader says that the proposal to settle it at Rs.1200/- is reasonable. The driver of the plff's truck had been originally prosecuted for rash and neglivent driving. But the magistrate who held the trial has acquitted him Of course this decision does not bind the Civil Court. But the fact remains that the accident had resulted in severe damage to plff's truck. He has produced the bills for the amount spent by him. From the correspondence it appears that he had offered to settle the claim amicably but as the claim was not settled within the period of limitation the plff had to file the suit. I have already putin the witness list. But in view of the proposal made by the plff's pleader I think that Govt. should consider the advisibility of effecting a compromise. My suggestion is that a net sum of Rs.1000/- should be paid to the plff instead of Rs.1200/- and costs. The plff's pleader says that he will try to induce his client to accept my suggestion. Looking to the peculiar nature of the facts of the case it is difficult to foresee the

result. Therefore the question of settling the suit by compromise appears to be ~~the~~ advisible. An early reply is necessary as the suit is fixed for hearing on 12-11-1951.

Yours faithfully,

D.G.P.Kanara.

Submitted through the Collector of Kanara.Karwar.

D.G.P.Kanara.

20 OCT 195

Receipt

22/10/51

No. TRA.4663

Karwar, 24.10.1951.

To: The Remembrancer of Legal Affairs, Bombay

The Colr. of Kanara

Please see the letter overleaf. The proposal may be settled as suggested in the letter overleaf. If there is any difficulties, please let us know.

9-11

Sol(Asst)

D

Please see the letter from D.G.P. This is a proposal for Compromise. The Question in the suit will be a Question of fact to be proved by evidence. The Course that may be followed in this case is to get the opinion of A.A.G.(Mad) regarding this application & if they have no objection, the Govt may then be instructed to accept the proposal

9/11 A.Solicitor (Mad)

From:-

The District Government Pleader, Kanara.

23 : 9

To

The Remembrancer of Legal Affairs, Bombay.

L. D. 13 MAR 1952

Subject:- Appeal against the decree passed against the Union Government in O.S.89-1950. Report under Rule 131 of the Rules for the Conduct Affairs.

No. 107 of 1952. Karwar, dated 8th March 1952.

Sir,

The judgment in this case was declared on 30th January 1952. Certified copy was applied for on 1-2-1952. The decree was signed on 14-2-1952. The certified copies were ready on 26th February 1952 but they were actually delivered on 6-3-1952. The last day for filing this appeal is 10-4-1952.

2. I recommend filing of an appeal on the following grounds:-

1. The learned Judge is wrong in holding that deft's driver caused accident by his rash and negligent driving. Accidents may be caused on account of several causes, such as excess speed, going on wrong side, driving negligently, non use of brakes, non blowing of horns or non use of the brakes or the stearing not being kept in order. It is for the plff to make out a specific case. In the plaint it was asserted that the driver was driving at high and reckless speed which amounted to rashness The second ground was that he was driving on the wrong side. Thus both rashness and negligence had been specifically pleaded. Ex.No.41 is the complaint given by the driver to the police station at Ankola. It was written by the plff himself. In the cross examination plff swore that he had made all the enquiries with the driver regarding the cause of the accident before writing Ex.No.41. Driver deposed that he was neither asked nor had he given the reason for the accident. This discrepancy has not been noticed by the Civil Judge. It is also important to note that Ex.No.41 had been lodged merely 3 hours after the driver reached Ankola. The police station is within a furlong from plff's guarrage. The nearest

25 124

police out post was Sunksal which was only a mile or so from the place of accident. The plff admits that he lodged the information Ex.41 with a view to get a panchanama drawn up and also took a photo of his truck with the object of claiming damages from the Government. If he was acting bonafide the information must have been lodged at the nearest chawki and the panchanama would have been drawn up immediately after the accident. But the failure of the driver to get the panchanama drawn up by the outpost amaldar of Sunksal read with the delay of 3 hours of lodging this information late in the evening at a police station 17 miles from the place of accident clearly proved that the object was to tamper with the position of the plff's truck overnight. There was no other reason as to why the information should have been lodged so late. Neither the plff nor the driver could explain the delay. As the information Ex.41 was lodged after night fall the panchanama had to be drawn up the next day at about 10 A.M. The accident had taken place the previous day at 3-30 P.M. Thus the plff got sufficient time to tamper with the position of the truck. This is confirmed further by the contents of Ex.41 wherein ~~only~~ one of the two grounds mentioned in the plaint viz-, the deft's truck coming on wrong side has been asserted. If the driver knew that the deft's truck was also being driven at high and reckless speed he would not have failed to mention this fact in Ex.41. Further it is important to note that in the notice issued under section 80 only and high and reckless speed has been asserted and no case has been made out of the deft's truck coming on wrong side. The notice is the basis of the suit and it was a new case that was made out in the plaint that the deft's truck was on the wrong side. In the cross examination plff deposed that he had not asked his pleader to mention high and reckless speed in the plaint. The following passage is relevant;

29 123

" My ~~garage~~ garage is half furlong from Police Stati on. My driver told me at 5-30 P.M. that the military truck had dashed ~~it~~ into my truck by coming on wrong side. That was all. I cant say whether excess speed was mentioned to me then nor did I ask the driver. I did not instruct my pleader to state high and reckless speed in the plaint. I did not ask my driver about blowing of horn and application of brakes. The driver gave the complaint which was written by me It was recorded at 8-30 P.M I can't explain why there was 3 hours delay.Photo and panchanama were taken inorder to file a suit against the Government. Thus it will be clear that there were contradictory statements and there was absolutely no evidence to prove either driving on the wrong side or rash and negligent driving. Inspite of this the learned Civil Judge has relied upon the circumstances that the military truck had very slight damage and the plff's truck had major damage and therefore the deft's truck must be ~~in fault~~ at fault He has practically shown his prejudice against the deft's case simply because the deft's truck did not stay on the spot until panchanama nor did the military officer given any information to the Sunksal Out Post Officer. Deft's witness Captain Bhosle swore that he did not know of theexistance of this Out post and he did not wait for a panchanama as the damage caused to the plff's truck was very slight. Although the plff claimed damages of Rs.2400/- the panchanama mentioned the damage of Rs.400/-. The plff is himself an experienced driver of more than 32 years and yet he says that he did not object to this estimate. He preferred a false Bill and the Court had to reduce the amount to Rs.800/-. His statements as to the damage caused have not been believed. The Bill preferred by him has been

29 — 125

discarded. Plff asserted that the truck had originally towed from the scene of accident to Ankola which is a distance of 17 miles. His driver said that the truck was taken to Belgaum from the scene of accident itself after 8 or 10 days of the accident. Plff said that it was taken the very next day. The mechanic who had preferred the Bill swore that there was complete overhauling of the truck. There was an item in his Bill called fender. He said that he could not explain what fender means. He further said that he did not know that plff's truck had met with an accident. In these circumstances it is clear that the Bill of the mechanic was a bogus one and damage caused to the plff's truck was actually negligble. Therefore Capt. Bhosle was justified that he did not wait for the panchanama. He could not anticipate that plff was likely to create evidence to claim excessive damages.

2. The fact that the position of the truck was changed overnight could be seen from the contents of the panchanama. The two trucks were coming from opposite directions. The road was 18 feet in width. Plff's truck was 7' width requiring about 8' space for safe negotiation. This fact he admits in his cross examination. The panchanam which he got drawn up the next morning showed that the plff's truck was on the extreme left side of the road. Its front wheel was beyond the edge of the road and that there was an empty space to its right side which is mentioned in the panchanama as 12' -8" from the front wheel and 10' from the hind wheel. It is admitted that the deft's truck also required only about 8' space for safe negotiation. Hence if the contents of the panchanama are correct there would not have been any accident at all, unless both the Jeumella buses had come face to face and deft's truck was on the wrong side. If the deft's truck had thus come on the wrong side the question was in what position the accident took place. The panchanama mentioned that the brake marks of the deft's wheel which showed that the deft'

truck had come in direct opposition of plff's truck. In that case the left side of plff's truck would come in contact with the right side of the deft's truck, and the right side of the plff's truck would come in contact ~~in~~ the left side of the deft's truck. Whereas the damage caused to the plff's truck was only on the right side and the damage to the deft's truck was also on its right side. Thus the position seen from the panchanama were falsified by the actual damage caused. Further the plff's driver and the panchanama asserted that the bus was visible to the deft's driver from a distance of 114' In that case it is improbable to expect any collusion at all, nor the necessity for the plff's truck to go to the extreme left beyond the edge of theroad. Hence to disprove the plff's case the panchanama had been got produced by the deft out of the papers of the criminal case filed against the driver under the Motor Vehicle Act. I had also applied for local inspection in which application I clearly mentioned that the deft relies upon the panchanama to disprove the contents thereof and the local inspection was necessary to prove that no accident would have taken place in the positions given in the panchanama were correct. This application had been granted without any opposition. Inspite of this the trial has found an easy way to gag the defence by saying that the panchanama was a document got produeced by the defence and that the deft could not rely upon the falsity of the contents. A document may be produced also for cross examination of the opposite party or his witnesses. In fact this panchanama has been used extensively during the cross-examination of the plff and his driver. The plff had given up the H.C. who had given drawn up the panchanama The plff had referred this panchanama in his examination in chief. Thus the plff had used it as his own document, whereas I had used it in the cross examination only to prove falsity of the pontents of the panchanama. Yet the

33 +29

trial judge has held that it was not open to me to challenge the contents of the panchanama because it was got produced by me. He has relied upon an unrepported case of the Bombay High Court but in that case the question was about the existence of a will. The will was not forthcoming but the existence of the will had been mentioned in one of documents produced by the deft himself. Therefore it was held that the deft in that case could not challenge the existence of the will which had been mentioned in the R.R. merely 40 years before the suit. The learned Judge is wrong in relying upon that judgment. Thus it will be seen that the finding of fact is perverse.

Secondly,I had relied upon a Privy Council decision in 20 B.L.R.page 735 that in a moment of peril and difficulty Court should not expect perfect judgment, presence of mind and promptitude. I had also relied upon I.L.R.52 Calcutta, 602 which lays down at page 610 that if Court can't decide whether plff or deft was negligent plff should fail. Further it holds that if plff had occasion to avoid the accident plff should fail. Thus in this case there was no independent evidence to prove negligence or rashness on the part of the deft's driver. On the other hand the plff's case had been smashed in the cross examination and it was shown that plff's word had absolutely no value. The evidence of the driver was that of the interested person and it was wrongly relied upon. Hence the finding on issue No.1 is clearly wrong.

The next important question is about the quantum of damages. Plff claimed 1800 for repairs and Rs.600 for loss of business. This question is discussed in para 6. The panchanama estimated the damage at Rs.400/- yet the trial court has awarded Rs.500/- as damages. The plff claimed that the truck was remained idle for 17 days.This story was clearly contradicted by his driver. Yet the Court has allowed Rs.300 on this account.

Issues 2 and 3 go with issue No.1. We therefore now come to issues 4 A to 4D. They have been discussed in para 9 of the judgment.The Rulings relied upon by me on these points

have not even been ~~at~~ touched or discussed by the Civil Judge, in his judgment. In para 10 he has referred to a Ruling in 51 B.L.R. 342 and has said further that there was no necesssity to refer to anyother Rulings in view of this single Ruling. But this Bombay Ruling was reversed by the Supreme Court in 53 B.L.R. page 1 equal to A.I.R.1950 Supreme Court page222. Firstly, this Bombay Ruling has been reversed and therefore it has lost its importance. Secondly, this Bombay Ruling was not a case of Torts nor a Ruling as to the master's liability for the servant's acts. The main question therein was whether an order passed by the Government under an ordinance could be challenged. The High Court held that it could be challenged. The Supreme Court held that it could not be challenged. Thirdly, except the Rulings in 5 B.H.C.R. and 28 Bombay 314 none of the Rulings quoted by me were ever discussed anywhere in this Bombay Rulingx.

I had relied upon I.L.R.1942 Madras 686.This Ruling was confirmed by the Federal Court vide A.I.R. 1944 Federal Court page 41 Maharani Gulchanang versus Province of Madras. Therefore when there was a Ruling of a Higher Court than that of the High Court a Civil Court ought to have followed the Federal Court decision. In this Madras Ruling the order was against the Maharaja but the police officers had wrongly detained Maharani and her daughter. Therefore the case was one of torts. Page 731 of the Madras Ruling will show that the question was whether the Province of Madras could be held liable for the acts of the police officers. It was contended by the appellant that the Government was liable like anyother master, for acts done by the servants within the scope of their authority even if they happened to be in excess of their orders. At page 732 it is observed

" had we been dealing with a private individual or his servant who were shown to have committed a civil injury in the course of their employment and for their

37 133

masters benefit even if the act was beyond specific instructions the master would be liable."

At page 733 it is observed that the government liability for acts performed by subordinate servants in performance of the statutory orders is distinguishable from private master's liability. At page 736 it is observed that the detention of the plff being wholly wrongly and illegal could not render government liable unless ratified by Govt. " Acts of the Govt officer by Govt only when he is acting in discharge of the certain duty within the limits of his authority or if he exceeds that authority when the Govt in fact or in law directly or by implication ratifies the excess"

I had also relied upon the following Rulings.

1. Chitale's C.P.C.commentary under section 79 at page753 and 754.
2. A.I.R. 1950 Allahabad 206 wherein property attached by police in a theft case was lost in court due to the negligence of the clerks (see paras 7,8,9,10 and 23) of this Ruling.
3. A.I.R.1943 Nagpur 287 ~~equal to 943~~ 1943 I.L.R.Nagpur 511. Ground used for bombing practice, by military. Grenade fire remained unexploded. No notice put up on the spot except red flag. Negligence held proved but the secretary of State was held to be not liable for damages. (See page 288)-
4. I.L.R.39 Madras page ~~252~~ 351. Secretary of State Verssus A.Cockcraft. Plff suffered injury in an accident due to negligence ~~in stating~~ stacking of gravel on a military road. It was held that the provision and maintenance of roads, especially military road, is one of the functions of the Govt carried on in the exercise. of its soverign powers In our present case it is an admitted fact that the military truck had come for recruiting purpose and it was returning to Head office. Therefore this ruling applied.

39 135

5. I.L.R.9 Rangoon 375 Kadar Vs. Secretary of State Plff was maliciously and unlawfully arrested and falsel imprisoned for 6 days. Preliminary point raised by Govt that S.O.S. was not liable for tortious act of police-officers and that the facts alleged in the plaint did not ~~dixix~~ disclose ~~ef~~ cause of action. At page 377 5 Luknow 157 equal to 1931 A.I.R. Oudh has been referred to and then it is said " It is a settled Rule of Law that S.O.S. can only be sued in respect of those matters for which East India Company could have been sued, since the Crown in charge of the present Govt is only the successor to East India Company. The Company could not be sued for its acts in the exercise of the soverign powers delegated to it by the Soverign Crown.

6. 5 Luknow 157 The Rule which makes masters responsible for torts committed by their servants is in-applicable to the cases of the Crown. Plff therein was a postmaste who reported a dacoity and loss of Rs.1304/- and stamps. The report was ~~as~~ treated as false and was charged of embezzlement and sentenced for 4 years RI and fine of Rs.500/- Subsequently the real ~~xxp~~ culprit was traced. Hence plff claimed damages. There were two points in this Ruling. Firstly whether the plaint ~~is closed caused~~ disclosed ~~of~~ cause of action against S.O.S. Secondly it was held that S.O.S. cannot be held responsible for the wrongful acts of the subordinate officers. This Ruling relied upon several Bombay Rulings.

7. I.L.R.37 Madras 55 A.M.Ros. There were 2 orders of the D.M. suspending and dismissing ~~the~~ plff. The Ruling in 5 B.H.C.R. appendix 1 was discussed at page 60. At page 6 one English case of Tobin Vs. Queen was discussed. There is also a passage from storey on agency. 28 Bombay 314 was followed in this case.

8. I.L.R. 28 Bombay 314. Suit for damages for negligence of of a constable with respect of goods. This seizer was not in obedience to any executive order nor the act was of any benefit to the Revenue of the Govt. Hence Gov

was not held responsible.

9. I.L.R.1939 Madras 843 which distinguished and explained the Ruling in 5 B.H.C.R.

10. I.L.R.1941 Nagpur page 875 at page 882.

All these rulings have been brushed aside.

Then I come to issues 5 and 6. The plaint does not disclose any cause of action against the Union Govt. Except mentioning that the driver was a military driver and the act of negligent driving was during his ~~corse~~ course of employmen no further particulars have been given either in the noti or the plaint. I relied on the following.

1. Order 6 Rule 2 C.P.C.

2. Order 7 Rule 11 and Mullas Commentary at page 611.

3. I.L.R.21 Allahabad 341 at page 345.

4. I.L.R.44 Allahabad 573 at page 575.

5. 53 Allahabad page 65 F.B. at page 70.

In view of these facts I strongly recommend filing of an appeal against the judgment and decree pass by the Civil Judge, Senior Division, Karwar. Certified copy of the judgment has been retained by me. I have sent herewith an uncertified copy of the judgment. The last date for filing an appeal is 10th April 1952. Hence early orders may be passed sanctioning the filing of the appeal. If the orders are received late I will file appeal on 10 annas stamp on the last date in anticipation of sanction and pay the deficit after your sanction is received. However this may be treated as urgent.

Yours faithfully,

Dist.Govt.Pl.Kanara.

Respectfully submitted through the Collector of Kana

D.G.P.Kanara.

S.D.

Please see the letter from the D.G.P Kanara requesting the Govt to sanction the filing of appeal against the decree in Kanara Civil Suit No 89/5

As it is the Suit against the union of India, necessary report will have to be called for under Rule 132 of the L.O. Rules. these papers may be kept in abeyance till the receipt of the report from the Military authorities

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1.8.13

A. Sahukar (M.L) Report be called for immediately.

1/8/13

43 137

Submitted with reference to the Kanara District Government Pleader's letter No.107 of 1952 in Civil Suit No.89 of 1950.

This is a suit in damages claiming Rs.2400/- from the Union of India for the loss caused by collision to the plaintiff's truck by the rash, negligent and the wrongside driving of the military truck driver.

The Trial Court decreed Rs.800/- to the plaintiff from the defendant ~~x~~ with proportionate costs.

The District Government Pleader, Kanara has forwarded these papers for sanctioning the filing of an appeal with a strong recommendation ~~xxx~~ therefor.

Pleadings of the parties are set out in detail in the judgment of the Trial Court.

1) Three following appeallable grounds arise in this case -

(i) The sole responsibility of the military truck driver for the accident,

(ii) The award of damages,

(iii) The Union of India's liability for the tortious act of its servant.

2) As regards the first point the District Government Pleader reports that the plaintiff's oral and documentary evidence is hopelessly conflicting and contradictory. On going through the evidence on the point, as set out in the judgment of the trial Court, it appears that the Court is led more by the ~~xxxxx~~ lacuna in the defendant's evidence than by the positive proof which the plaintiff could give thereon. Out of this tangled mass of evidence, one circumstance stands out, unexplained, that considering the width of the road and the space occupied by the two trucks in plying, the military truck driver, if he be on the wrong side, would have dashed against

and damaged the front portion of the plaintiff's truck. The evidence of the plaintiff shows that his truck was damaged on the right side. The military truck was also damaged on the right side. This leads one to the irresistible inference that the military truck was not being driven on the wrong side. The finding of the trial Court on issue No.1 is, therefore, disputable.

3) The trial court has disbelieved the plaintiff's evidence in awarding the damages. Faced with the difficulty of having no reliable evidence from the plaintiff on the question of assessing the damages, the trial Court has followed the rough and ready method in awarding the quantum of damages.

Both these issues are, after all, questions of fact, dependent, on the appreciation of evidence on both sides.

4) The third appeallable ground is a question of law and the real bone of contention between the parties. The trial Court, following ~~the side~~ the discussion by the Chief Justice of the Bombay High Court on the extent and interpretation of Sovereign acts of the Govt.* in 51 Bom.L.R.p.342, held the Union of India liable for the negligence, ~~if any~~, of its servant The ruling relied upon by the trial Court was reversed by the Supreme Court in 53 Bom.L.R.p.1. Besides the case in 51 Bom.L.R.p.342 has no ~~bearing~~ bearing on the facts of the present case.

5) The correct statement of law regarding the liability of Govt. for the ~~x~~ tortious acts of its servants have been very succinctly summarised by Their Lordships of the Madras High Court in I.L.R.1942 Madras 696. This was a case of torts. This case was later on confirmed by the Federal Court in A.I.R. 1946 Federal Court p.41. On p.736 in A.I.R. 1942 Mad. the Madras High Court has observed that under three categories, Govt. could not be held liable for the tortious acts of its servants

(i) if it was done in pursuance of a statutory duty, (ii) if the act be in excess of the authority, it must be ratified or adopted by the Govt. (iii) no action for a tort committed by its servants while in passing the order, in the performance of which the tort was committed the Govt. was discharinging its governmental functions as a Sovereign.

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The present case falls in categories (ii) and (iii). The military truck was plying for recruiting purposes. It was one of the Sovereign functions. Second aspect of the law on the point that "if the tort committed by the servant in the discharge of his duty as such, was not sanctioned or ratified, Govt. could not be held liable", was not at all taken into consideration by the trial Court. The District Government Pleader has quoted a number of authorities on the point.

It is therefore submitted that the case is worth taking in appeal.

24/3

A Solicitor (Mid)

I agree that this is a fit case for filing an appeal. Sanction to file an appeal may be accorded.

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R.L.A. As on merits we have a good case, I endorse the proposal that an appeal be filed. We must also take advantage of the legal position which obtains. I would have been reluctant to do

24/3

47-44

Received on- 12th April 1950.

Registered on- 16th June 1950.

Decided on- 30th January 1952.

Duration- One year, 7 months and 14 days.

In the Court of the Civil Judge, Senior Division, Karwar.

At Karwar. Exhibit No.60.

Original Civil Suit No. 89 of 1950.

Pleaders

Shri.P.S.Kamat.

Venkatrao Upendra Shenvi, age 50, Hindu, Contractor & Motor Bus owner, residing at Ankola, District: North Kanara, Bombay State. — Plaintiff

against

Government pleader.

The Union of India — Defendant

Claim-Rs.2400/- for all purposes.

Suit for damages.

This is a suit filed against the Union of India by a truck-owner of Ankola claiming damages to the extent of Rs.2400/- His case is as follows: He owns truck No.DXX 590 registered as a Public Carrier. Abdul Khadar Shaikh Ahmed was the driver on this truck at the time of accident. On 10th February 1948 this truck was being plied on the Karwar-Bellary Road having been hired to transport road-metal. At Furlong Stone No.33/7 near the village Gunksal Military Truck W.D.No.482744 which was returning to Belgaum met Plaintiff's truck *coming from the opposite direction. The road at this place is on a descent towards Bellary. The Military Truck having been driven at a high and reckless speed collided against Plaintiff's vehicle causing it heavy damage. Plaintiff's truck was on the proper side of the road; not so the Government Truck. Though Plaintiff's driver stopped his truck by applying brekes the Military Truck dashed into it. The accident was caused by the rash and negligent act of the Military driver in the course of duty. Thereafter criminal Case No.75/1948 was filed against Plaintiff's driver for causing the said accident by the

*o.p.2.

Police at Ankola wherein he has been acquitted. The repairs of the truck cost Plaintiff a sum of Rs.1880-10-0 as can be seen from the Bill of the firm where the repairs were carried out; the vehicle besides had to remain idle from 10th February 1948 till 28th February 1948 when it was being repaired and this has entailed a loss of Rs.612-8-0 at the rate of Rs.35/- per day which was the hire Plaintiff secured per day. Out of the total Rs.94-2=0 are dropped. Plaintiff tried to have this claim settled with the Military authority after the criminal Court judgment in his favour. Nothing has come of it. Plaintiff therefore served the Union Goverhment of India with a notice as required under Section 80 Civil Procedure Code on 6th February 1950. That also has been ignored. Cause of action accrued on 10th February 1948.

2. In reply to this Defendant by its written statement at exhibit no.14, contends as follows: The fact of accident on 10th February 1948 is admitted. It is however not admitted that the Military vehicle was driven at a high and reckless speed or that its driver was negligent. Nor is it true that Plaintiff's driver was on his proper side and Military driver was on the wrong side. No brakes had been applied by Plaintiff's driver and his vehicle brought to a halt. The accident was not caused solely by the negligence and rashness of the Military driver. The allegations in para 2 of the plaint are also denied. Defendant was not a party to Criminal Case No.75 of 1948. That judgment is not admissible in this Court. The amount alleged to have been spent on repairs is denied. Damage caused was slight. The period during which Plaintiff's vehicle is alleged to have been kept idle was not necessary. The claim on *this account is besides heavy. Notice issued to Government is *o.p.3 defective and invalid. Defendant is not responsible for the act of the Military driver. The accident was caused by several reasons- Because of the hill feature to the left of the Military driver, his visibility was limited to his immediate front. The road takes a curve at this point; while emerging from a bend in the road Plaintiff's truck came suddenly from the opposite direction in the centre of the road without any warning. There was contributory negligence on Plaintiff's driver's part. Neither the plaint nor the notice

49 143

bestows any cause of action against Defendant. Government of India Act, 1935 was in force at the date of accident. Suit brought against Union Government is not maintainable. Military Truck was plying for military purposes and was not under the direct orders of Government. It was done in the exercise of Government sovereign power and negligence of the Military driver does not give Plaintiff an action in tort. The principle of Master being liable for the faults of his servant does not extend to the Crown or the State. Defendant would have been liable if an act had been directly ordered by Defendant or ratified by Government. Commercial acts have got to be distinguished from Administrative powers of the State. Plaintiff's truck being insured against third party, no cause of action lies against Defendant. The claim is not in time Plaintiff cannot claim future interest.

3. On these pleadings the following issues were drawn by me at exhibit no.17, issue no.4 being thereafter split up under different headings as can be seen from the issue paper:

1. Whether Plaintiff proves that the Defendant's driver caused the accident by rash and negligent driving ?

2. Whether Defendant proves there was contributory negligence on the part of Plaintiff's driver ?

3. Does Plaintiff prove that Defendant is liable for the accident ?

4a. Whether the provisions of Section 176 of the Government of India Act are applicable to the present case and is the suit not maintainable against Defendant ?

*o.p.4. * 4b. Whether Defendant proves that the Military Truck was plying for military purposes and therefore Defendant is not liable for an act done in exercise of Sovereign right ?

4c. Whether Plaintiff proves that the Defendant is liable for the act of its servant ?

4d. Whether the Defendant proves that the Plaintiff's truck was insured against third party risk and

therefore Plaintiff has no cause of action against Defendant ?

5. Whether the plaint and the notice given under Section 80 disclose any cause of action against Defendant ?

6. If not, is the suit maintainable ?

7. Whether notice issued under Section 80 is legal and valid ?

8. To what damages is Plaintiff entitled ?

9. What order ?

4. My findings are:-

1. In the affirmative.

2. In the negative.

3. In the affirmative.

4a. Suit is maintainable.

4b. In the negative.

4c. In the affirmative.

4d. In the negative.

5. In the affirmative.

6. Does not survive.

7. In the negative.

8. As under.

9. As under.

5. This is an action instituted against the Union of India by a Truck owner for damages to the extent of Rs.2400/-. This action has been founded on the allegation that a military vehicle on duty caused the accident being driven at the time by its Military driver rashly and negligently and on the wrong side of the road. Plaintiff affirms that though he stopped his vehicle by applying brakes the Military truck dashed into his vehicle causing it damage. In the Criminal Case launched against the Plaintiff's driver he has been acquitted. The claim has been resisted by Defendant on several grounds. The fact of the accident is admitted. Inter alia it is *incipiently contended that the accident was due to the negligence *- *o.p.5 on the part Plaintiff's driver driving in the centre of the road and giving no signal. Alternatively there was contributory negligence

on his part. These different theories embodied in issues nos.1 and 2 I shall firstly discuss.

6. The oral evidence adduced consists of the testimony of Plaintiff at exhibit no.39, his driver at exhibit no.42, the mechanic at exhibit no.43; the photographer-cum-panch at exhibit no.51, the sub-contractor at exhibit no.52 and the Administrative Officer in the Military vehicle at exhibit no.54. Plaintiff's testimony, since he was not in the truck at the time of the accident is not usueful on these issues. He states that he learnt about the accident from his driver the same evening at 5-30 P.M. Driver tells us, he was returning empty towards Karwar and was on his proper side. The Military vehicle came on the wrong side at high speed, dashed into his truck which receded a distance of 5 feet as a result of the impact causing it severe damage. The Military Truck, though asked to wait for a Panchanama, proceeded soon after the accident. Besides the driver there were 2-3 passengers in it. His engine could not be started though others in the offending vehicle tried. Plaintiff wanted the Military driver to inform t the Police about the accident which they promised to do. He had a cleaner and 2-3 coolies in the truck. He immediately want to Ankola, informed Plaintiff, and submitted a report to the Police. He was driving in the 3rd gear; the Military truck was noticed at a distance of 25 yards before the collision; he brought his truck to a halt by applying brakes. In cross, he apprises us that since 1927 he has been a driver and has a clean record. The Military Truck had no visible damage. He has been confronted with his report to the police, exhibit no.41, and asked whether in that report he had referred to the Military driver driving on the wrong side and rashly. Witness states he does not remember. Actually on going through his report I find that witness had complained that the Military vehicle had been driven on the wrong side and had left immedia -ly after the accident without a Panchanama being made though witness had asked them to wait *for a Panchanama. He had gone to the scene when the Panchanama was made and has denied the

*o.p.6.

suggestion that the position of the truck had been altered by him subsequent to the accident and before the Panchanama was made the next day. He denies having driven his truck in the middle of the road. He did not go to Sunksal and lodge information with the Police Out-Post but proceeded to Ankola in a lorry which was passing soon after the accident. This has not struck me as a course of conduct betraying guilt as contended by Defendant. It is likely that his first reaction was to inform his Master about the accident. His truck was negotiating a gradient at the time of the accident. He has denied that his truck receded because of the slope in the road and states it was caused by the impact. It is not unlikely that the slope facilitated this recession. In reply to the Court's query he has stated that the truck was left behind in charge of a coolie when he came to Ankola. Plaintiff has narrated the subsequent course of events; he states that on learning of the accident he informed the Police who went there the following morining and had a Panchanama made. He had a photo taken before the Panchanama. In cross, he replies that he cannot state whether the driver mentioned Military driver's excess speed while complaining about the accident; he did not question him on the point, which does not cotton with his later statement that all information was taken of his driver. He states he went immediately to the Police station. The complaint was written by him. He cannot explain why there was a delay of 3 hours in giving this complaint. He has denied that the information was prepensely delayed and position of the truck altered over-night. He admits that there is a fair amount of traffic on this road. The 4th witness the photographer at exhibit no.51, affirms that Plaintiff had taken him. He had taken the photo of Plaintiff's truck at about 10 A.M. before the Panchanama was made. He also signed the Panchanama. He knows a little driving. Before I discuss two theories that have been put forth before the Court in connection with the accident, I shall sc... the evidence of Defendant's witness. He states that he had come to Karwar on recruiting duty in this vehicle. One *Gaikwad was the driver at the time. Captain Kulkarni and two *o.p.7. Havildars were in the Military Truck along with him. They had left Karwar at 2 P.M. The accident took place a little beyond the

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Furlong-Stone 33/7. There was a hill feature to their left and a curve in the road. His driver sounded the horn. The Military Truck was in the 4th gear and going at moderate speed. Suddenly his driver espied Plaintiff's vehicle coming in the opposite direction at a distance of 5 to 6 yards. He applied brakes and stopped the vehicle within 2 yards after seeing it. Plaintiff' truck was in the middle of the road. On seeing the Military Truck he tried to swerve to his left and in doing so his right wheel dashed into the right wheel of the Military car and Plaintiff's vehicle receded 5 to 6 feet it being on a descent. The vehicles involved in the accident were of the same width and weight. He was seated in a compartment behind the driver. He alighted after the accident, made enquiries if anybody was injured, found that an occupant in Plaintiff's vehicle had a little bruise on his forehead. He noted the damage caused to both the vehicles in his note-book, prepared a rough sketch of the scene with other details. There were no skid-marks showing application of brakes by Plaintiff's driver nor did he hear Plaintiff's driver's horn. He gave his identity to Plaintiff's driver and proceeded telling him that he would receive a 'slip' relating to the accident. There was no suggestion that he shoul await a Panchanama or lodge information with the Police forth-with. The damage to both the trucks was not serious. The accident report on a prescribed form was completed the follow-ing day, (exhibit no.55) and forwarded to Poona. A slip was thereafter sent through the D.S.P to Plaintiff's driver. He admits that as a result of the accident the engine of Plain-tiff's truck had ceased working. No attempt was made to test whether it was in working order. He avers at one place that he was in a hurry and being a non-technical man did not worry about trying to start Plaintiff's truck. Driver Gaikwad was released in 1949 June and cannot be traced. Captain Kulkarni has proceeded to Edinburgh. One of the two clerks has been discharged and the *other is at Jubhalpore. He has denied that they were proceeding at an excessive speed. He states that the truck position as shown in the photo is not the correct

*o.p.8.

position of the Truck after the accident. He was not aware that there was a Police Out-Post at Sunksal. In cross he states that he had occasion to see the photo, exhibit No.59 , in the course of the Criminal Case and did not challenge its accuracy since it was shown to him casually. He states that the note-book on which the sketch and jottings were made soon after the accident has not been produced by him. He admits measurements were not taken when making notes. He has denied Gaikwad was discharged because of his propensity for accidents. His driving record, he states, is with them, but not produced. That omission has been unfavourably commented upon. He admits the site of accident as depicted in the photo is correct. He has recanted his earlier statement that he was in a hurry to get back to Belgaum. That repairs to the Military vehicle cost Rs.38/-. Plaintiff's bus was not moved before they proceeded. They had to reverse 20 yards before continuing their journey after the accident. In reply to the Court's queries he avers that their chassis being high the right side of their bumper came into contact with Plaintiff's right side. Asked why they did not await a Panchanama he states that there being an officer in the vehicle the usual procedure of waiting for a Panchanama was dispensed with it being incumbent on the officer to submit a report to the D.S.P. through the proper channels. That strange explanation fails to impress one.

Having briefly scanned the oral evidence in the case, I shall now pass on to the Panchanama made by the Police the following morning. The Panchanama at exhibit no.50 states that Plaintiff's truck was between 33/7 and 34 Mile-Stones on the Karwar-Bellary Road racing Karwar at a distance of 114 feet from Stone 33/7. It was on the left side of the road unloaded. There is a slope towards Yellapur, a curve ih the road where the truck stood which was visible from the Mile-Stone. The width of the road, where the truck is, is 18 feet. Distance from right front wheel to the edge of the road is 12 feet 8 inches; rrom the rear wheel 10 feet. The edge of the gutter * to the left is at a distance of 2 feet from the left wheel. *o.p.9 The front left wheel is on the edge of the gutter; on the right of the truck there is sufficient space for busses to pass. There are marks of Military Truck tyres on the right side of the road viz.

Yellapur side at a distance of 2 feet to the left from the gutter. From these marks the distance to the left of the road is 16 feet. On the right-hand-side as you face Karwar is a hillock, to the left is a valley. There are marks showing Plaintiff's truck having receded a distance of 4 feet 5 inches from the point of the collision. Brakes appear to have been used, right-head-light of the truck is smashed and there are glass pieces that are fallen on the road. This Panchanama has been proved by exhibit no.51 who states he has signed the same. He avows in cross that he did not help in the measurements taken at the time. About this Panchanama Defendant's pleader has raised several objections. He submits that the Police Havildar that made the Panchanama has not been examined and further suggests that the first information to the Police was deliberately delayed in order to make a Panchanama impossible the same day and during this interval Plaintiff's bus was so shifted from the scene of accident as to throw all blame on the Military vehicle. These objections have got to be discounted. The Panchanama in the case has been produced by Defendant himself. Having produced it Defendant's pleader cannot be heard to say that the Police that had prepared the Panchanama should have been examined by Plaintiff. On this point view of Shri. P.S.Kamat, pleader for Plaintiff is buttressed by a ruling in our records of His Lordship Sir John Beaumount in Marappa Sukru Naik Vs. Shaba Laxman Shet, an unreported appeal from a judgment of this very Court. In that case an oral will that had been made was in dispute and there was a finding of fact given by both the lower Courts in favour of the same, which the Chief Justice, opined prima facie bound His Lordship. It was contended there was no admissible evidence to justify that finding. In His Lordship's opinion the appellant was in difficulty in view of certain document that he had produced to *favour his cause. Exhibit no.71 was relied upon as proving Plaintiff's case and then the appellant turned round and stated that it was inadmissible. That attitude, His Lordship ruled, he was not entitled to adopt (See Appeal

*o.p.10.

No.401-1937 in the Court Record). Relying on this judgment Mr. Kamat submits that the Panchanama having been produced by Defendant ~~xxx~~ he cannot now wriggle out of it and state that Plaintiff should have got it proved and it is not admissible in evidence in toto. He is not entitled to adopt such an attitude; Plaintiff is entitled to rely on it entirely. Anent the other objection that the information to the Police was prepensely delayed that seems in the nature of a wild allegation unsupported by a scintilla of evidence. It is admitted by Defendant's witness at exhibit no.54 that after the collision the engine of Plaintiff's truck had stopped. According to Plaintiff s driver futile attempts were made by the other side to start the engine. It is on the cards that efforts must have been made to see whether Plaintiff's truck was in running order or not after the accident. Plaintiff's driver's version has necessarily greater claim to our credence. It is difficult to imagine besides that on this high way Plaintiff's truck had been shifted between the time of the accident and the Panchanama about 30 feet and to the edge of the road in order to favour Plaintiff's present action. This shifting could not have been possible except with the aid of several men and would have besides left telltale marks behind. Consequently this theory propounded by the Government pleader has got to be wholly ruled out at this stage.

I should like to add that the Government pleader has been apologetic about the Panchanama produced and states that since the document was in his possession he thought it fitting in the interests of justice to produce the same but did not intend that the document should be relied upon in toto. He has in the last analysis submitted that if the Panchanama is credited Plaintiff's whole story totters to the ground. According to Panchanama there were marks of Military Truck tyres at a distance of 2 feet from the left-hand-side of the gutter as you faced Yellapur. He contends that if this was the position of the Military Truck then * the collision would have been a head-on collision and merely the right-side of the Plaintiff's vehicle would not have been damaged as has really happened. It is difficult to visualize to-day how exactly the accident took place. From the

*o.p.ll

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personal inspection of the site (see exhibit no.57) it did strike me that this accident could have been avoided because there was surficient distance for the Military driver to avoid the collision. I am inclined to hold however, that because of the hillock to the left coupled with the slope in the road the Military Truck proceeded on the wrong side of the road with speed further accelerated by the slope. The wrong side of the road must have been resorted to because of the hill feature to the left. If it was under control the accident could have been avoided by swerving to the left; when the actual collision took place there might have been lack of judgment on the part of the Military driver. The story advanced by Plaintiff's driver on the other hand appears far more probable. Obviously in view of the gradient he had to travel in the 3rd gear and at moderate speed. The curve in the road must have necessitate his taking the extreme side of the road. The fact that the car receded 5½ feet as admitted by Defendant's witness lends strength to his story that he had brought it to a stand-still. Unless he actually went to his wrong side (to the right) it was impossible for him to avert the collision. The brake marks of Plaintiff's vehicle may have been obliterated by the truck having been pushed back after the impact. The admission of Defendant's witness that the Military vehicle had to reverse to a distance of 20 yards before it proceeded on its journey is very pregnant. Once the position of the Plaintiff's vehicle is determined the fact that the Military Truck had to reverse such a great distance unmistakably shows that it was being driven on the wrong side of the road. It is neatly submitted by the Government pleader that when the original information was given to the Police only the wrong side of the road was mentioned and there was no reference to any rashness on the part of the driver * and excess speed; Plaintiff himself has stated that though he made enquiries of the driver no rashness was complained about. It is submitted that the case of Plaintiff has been subjected to some embellishment and an element of rashness is now sought to be introduced to fasten the blame on him. That charge has been well countered. Plaintiff's

*o.p.12.

Plaintiff's pleader submits that it was not necessary for him in the original complaint to give all causes leading to the accident. From the very outset Plaintiff's case was that there was no negligence on his part. He was on the proper side of the road. The negligence was on the part of the Military driver who had driven the vehicle on the wrong side of the road. Negligence as a tort is a breach of legal duty to take care. It is an omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do. I cannot but observe that the conduct of the Military personnel after the accident in departing forthwith was not above blame. They should have, like any other vehicle, waited for a Panchanama to be made. The presence of an officer in the truck was no justification or an explanation. Having departed after the accident without informing the Police or awaiting a Panchanama they cannot now complain about the Panchanama produced. Defendant's position is doubly delicate since this Panchanama has been produced by the Defendant itself. I must regretfully observe that I cannot understand how the Police decided to prosecute Plaintiff's driver disregarding the Panchanama which went to show that he was on the proper side of the road merely on the advice and instructions of the Military authorities. The Criminal prosecution had to terminate in favour of the Plaintiff's driver. With the Panchamama, before me, Defendant's failure to await a Panchanama, his failure to inform the Sunksal Police Out-Post, the opposing theory that has been trotted out that Plaintiff's vehicle was in the centre of the road, it was espied by them after negotiating the curve at a distance of 5 to 6 yards etc.— cannot be entertained even for a moment. If Plaintiff's vehicle was in the centre of the * road as stated by Defendant's witness it could not have been at the extremity of the road when the Panchanama was made. Between the two positions indicated by the Panchanama and Defendant's witness be it marked there is a distance of about 30 to 40 feet. The engine of Plaintiff's vehicle having stopped the contended shifting could not have been possible except with the help of several coolies which would have left marks on the road. In my opinion there is affirmative proof

*o.p.13.

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of negligence on the part of the Military driver to support an action, and this is not a case of even balance in the negligence of the two drivers. The alternative plea therefore that has been advanced by Defendant that there was contributory negligence on the part of Plaintiff's driver has to be ex exscinded. From the evidence before me I am convinced that the accident was caused by rash and negligent driving on the part of the Military driver; there was no contributory negligence on the part of Plaintiff's driver. I need not add that Defendant's failure to produce witness's original notes made soon after the accident, its failure to produce the driver's driving record, its failure to examine the driver— are other circumstances that have also weighed with me in arriving at my findings on issues nos.1 and 2.

6. Taking the question of damages, covered by issue No.8, this is also hotly contested. Plaintiff has claimed a sum of Rs.2400/- under two headings- Rs.1800/- against repairs and Rs.600/- against loss of business during the time the truck was under repairs. Here Plaintiff has a tough row to hoe in the face of the Panchanama. Let us analyse the evidence of the Panch, exhibit no.51. Though at one place he states the Panch recitals are true, he now challenges the estimated damages and seeks additional shelter behind the fact that the bonnet could not be opened. That latter is neutralised by his averment that he is not sure whether this fact has been incorporated in the Panchanama. Plaintiff, he admits, was consulted and he had assessed the damage at Rs.2000/- which

*o.p.14 *met with his approval; he however did not object to the figure of Rs.400/- in the Panchamama. Be it not overlooked Plaintiff himself is a mechanic in business since 1918 having his garage at Ankola in close proximity to the Police Station. Questioned about this gulf in the sum now claimed and previous estimate, Plaintiff states that his original estimate was Rs.2500/-. His grievance is that his estimate was not incorporated in the Panchanama. This does not avail him. It is not unlikely as has been pointed out by Defendant's

pleader that the Panch witness who deposed subsequent to Plaintiff and after the noon-recess, may have been thrown a hint by Plaintiff in pursuance of which he affirmed that Plaintiff had evaluated the damage at Rs.2000/- which met with his approval but that was not incorporated in the Panchanama. If this were a fact eventhough Plaintiff's opinion may have been discarded the opinion of the Panch could not have been so lightly brushed aside. Absence of any mention to this effect unmistakably points out that damage to the truck by common agreement had been assessed at Rs.400/-, ~~ex~~ exhibit no.51 besides knew driving. The alternative plea is that all damage was not visible since the bonnet could not be opened. That again is not abailable since Plaintiff a mechanic has stated, presurably at an unguarded moment, that all damage was visible. This view is reinforced on sifting the defence. It is contended damage to Plaintiff's truck was trivial; that the amount claimed is disproportionate and a bill has been got produced through a convenient mechanic from Belgaum in order to bolster up Plaintiff's claim and Plaintiff himself must have attended to the truck at his own garage. This plea cannot be discountenanced because of a conjunction of circumstances. To begin with are the conflicting and incongruent versions about what happened after the accident. Plaintiff has stated in his deposition at exhibit no.39 that on the day following the accident, the truck was toed to Ankola and thence to Belgaum and he delivered it to the mechanic at Belgaum. The expenses of toeing have been *borne by him. The driver in reply to the Court's query *o.p.1 states that the truck was toed to Belgaum from the scene of accident after 8 to 10 days by him and mechanic, exhibit no.43. The mechanic on the other hand does not bear out the version of either and goes to the extent of stating that he did not know that it had met with an accident and that it had been se to him for complete overhauling and he has replaced worn-out papts. In his reply to the Court's subsequent queries however fearing he has been a broken reed he has veered round and stated the whole bill submitted pertains to the damage caused by the accident. The mechanic, I must observe is not an impeccable witness to put it mildly. From his evidence it appears that he had his workshop at Belgaum for a period of 8 years and used to repair 3 to 4 vehicles monthly. He did not deal in or have spare

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parts with him. Having had this business for years it is surprising he did not maintain accounts or duplicates. He states he had vouchers of the spare parts purchased for Plaintiff; these he showed Plaintiff but he did not take them, nor has he preserved the same. Having had this suit in contemplation soon after the accident it is amazing Plaintiff did not care to take charge of these vouchers. Spare parts he states were purchased at different places; he is not in a position to state whether they were new or old. His own charges were not estimated at the outset. Asked about the condemned parts he responds that they were not taken charge of by Plaintiff and they would have fetched a sum of Rs.1 to 2. That is not all that is disquieting about his testimony. He has been asked about certain items that figure in the Bill. Rs.112-3-0 are shown against a fender.. Witness when asked as to what 'fender' stands for, to my utter bewilderment replies that he cannot explain what it stands for and how this sum of Rs.112/- came to be debited. About spindles that he used, he states that price of spindles when repairs were effected was Rs.100/- to 150/- each. In the bill he has shown their price at Rs.76/- each. There is another item of Rs.75/- for painting. That item again it is contended by Defendant's pleader would pointedly go to show that there must have been complete overhauling of the truck. Defendant's
o.p.16. pleader's final submission *in this connection is two-fold. Firstly that this truck was not at all sent to the mechanic at Belgaum for repairs. The bill is a fake. Nextly if the repairs were effected at all capitalising the accident Plaintiff has got the truck entirely overhauled. The items in the bill go to show that all of them could not have been occasioned by the alleged collision. In this connection yet another item of Rs.150/- debited by the mechanic against toeing charges from Sunksal to Belgaum call for comment. As stated earlier there is conflicting evidence about this toeing; Plaintiff does not state that since the amount was to be claimed eventually from Defendant the mechanic was asked to include it in his bill. If that was Plaintiff's version then the toeing charges that figured in the Bill sent by the mechanic could have been

justified. Plaintiff having spent this sum himself the cloud of suspicion surrounding the bill is deepened. This bill appears highly exaggerated and the amounts alleged to have been spent on different parts could not have been caused by the accident. I am convinced a trumped up bill has been tendered to prop up Plaintiff's present claim. Since this point exercised my mind considerably I was constrained to seek certain information of Plaintiff and learnt from him that this truck was purchased in 1937 and was overhauled through one V.N.Kamat at Belgaum two months prior to the accident at a cost of Rs.1200/-. About this Plaintiff has nothing more to offer beyond his bare word. The fact that this truck was thereafter committed to the care of different mechanic, exhibit no.43, cannot be lightly passed over. The Panchanama mentions that Plaintiff's truck had the usual fitness certificate given by the Motor Transport authorities. Nonetheless I am not prepared to believe that this huge bill of Rs.1880-10-0 was necessitated by the alleged collision. It may be noted in passing that according to Defendant's witness repairs of the Military Truck entailed only an expenditure of Rs.38/- or so. He has stated that both the vehicles were of similar weight and width. From the photo (exhibit no.59) it would appear that only the right-side of Plaintiff's truck was damaged. Plaintiff's failure to produce the damaged parts that have been replaced is another straw in the wind. I see no reason why the damage originally assessed by Panches soon after the accident should be disregarded. *Plaintiff being a mechanic, Panchanama having been made in the absence of the Military driver, it is not unlikely that Plaintiff's opinion in the matter of damages was sought and the explanation now put forward that certain damage to the truck was not visible from the outside and that is why the figure has swelled up four-and-a-half times has failed to impress me. In my opinion the amount claimed cannot be allowed. Plaintiff at best would be entitled to a sum of Rs.500/- against repairs inclusive of towing charges. *o.p.

7. Passing on to the other part of the claim dealing with the enforced idleness of the truck for a period of 17½ days when repairs were effected, according to Plaintiff at the time of the repairs

accident the truck was fetching daily a sum of Rs.35/- net. The P.W.D.Sub-contractor at exhibit no. 52,has corroborated Plaintiff on the point though unsupported by receipts or writing, this appears quite reasonable and just; I see no reason to dis-believe Plaintiff on this point. The other point for consideration is whether it occupied a period of 17 days as stated by Plaintiff. Here again, the oral testimony is not at all in harmony. According to the driver the truck remained at the scene of accident for 8 to 10 days before its removal to Belgaum. Plaintiff's version is that on the very next day it was toed to Ankola and thence to Belgaum. Why it was toed to Ankola in the first instance is not clear. The mechanic's evi evidence as scanned above, further complicates matters. The weight of the evidence favours the view that the truck was toed to Ankola the next day, and repairs effected by Plaintiff in his garage. The repairs could not have taken more than 8 to 10 days. Plaintiff would therefore be entitled to a sum of Rs.280/- to 350/- on this account. I allow Rs.300/-. The total damage Plaintiff would be entitled to would therefore be Rs.800/- on both counts.

8. I shall now take up certain minor and subordinate defences covered by issues nos.5 to 7. It is contended the notice issued under Section 80, does not disclose any cause of action and it is not a legal and valid notice. The copy of the notice sent to Defendant is produced at exhibit no.44.

*o.p.18 *Therein Plaintiff has stated that the Military Truck was being driven at high and reckless speed and collided against Plaintiff's vehicle causing it heavy damage. It goes to state that in the Criminal prosecution against Plaintiff's driver the Magistrate was of the opinion th t the Military vehicle was responsible for the accident. The Government pleader submits that the case of the Plaintiff as revealed in his information to the Police was that the Military venicle was driven on the wrong side of the road; there was no allusion then to reckless driving. Section 80 of the Civil Procedure Code requires inter alia that notice should state the cause

of action. What is meant by cause of action has been defined in the commentary to Section 20 Civil Procedure Code. It means every fact which if traversed, it would be necessary for Plaintiff to prove to support his right to judgment. It does not comprise every piece of evidence but every fact which is necessary to be proved to entitle Plaintiff to a decree. Every thing which is not proved would give Defendant a right to an immediate judgment must be a part of cause of action. Relying on this, learned Government pleader submits that in the notice the fact that the Military vehicle had been driven not merely recklessly but also on the wrong side of the road should have been incorporated and Plaintiff's failure to do so invalidates the notice sent to Government. Shri. P.S.Kamat, Plaintiff's pleader contrariwise defenced it, the mention in the notice that the Military vehicle was driven at reckless speed was sufficient and it was not incumbent on Plaintiff to mention that it had been driven on the wrong side. Even if the accident had been caused by reckless speed so long as Plaintiff's truck was on the right side Plaintiff would have been entitled to damages. It was not necessary to mention all the reasons that led to the accident. If Plaintiff's pleader had failed to mention any one cause leading to the accident then there would have been force in his contention. His failure to mention 'wrong side' is not such a grave omission as to invalidate the notice. Necessarily if the Military vehicle had been driven at reckless speed and on its side of the road the road being wide *there would have *o.p.19 been no accident and nothing for the Plaintiff to make a moan. The reckless and high speed complained about by Plaintiff in his notice leading to an accident necessarily implied that Defendant's vehicle was not on its proper side. This view has prevailed with me. Hence there is not much substance in this contention of Defendant. Hence my above finding.

Another charge levelled is that plaint is silent why the Union Government is sued for an accident caused by the Military vehicle; Plaintiff it is urged should have stated the Union Government was responsible as employer for the faults of its servant.

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There being no such express recital Plaintiff's suit, is defective and liable to be rejected. Here also Shri. Kamat has steered this boat to the harbour and taken the wind out Defendant's sails. It is submitted that the case of the Plaintiff as made out in the plaint is that this accident wa caused by the Military Truck being driven at reckless speed and on the wrong side in the course of duty; certain corres-pondence entered into with the Military authorities after driver's acquittal in the Criminal prosecution was infructuo is adverted to. Hence Plaintiff served the Union Government with a notice under Section 80 Civil Procedure Code which reached the Defence Department on 10th February 1950. In vie of these recitals in the plaint stating that the Military Truck was on duty and there was correspondence with the Military authorities which was abortive; ending with a notice to the Union Government, it was not necessary for the Plain-tiff to expressly state that the Union Government was respons ble for the faults of the Military driver as its employer. Th is an inevitable deduction an irrefragable conclusion from the preceding premises. Hence there is no infirmity contend. The plaint clearly discloses a cause of action against Defen-dant. I concur with Plaintiff's pleader and give my above findings on issues nos.5,6 and 7.

9. There remain issues nos.3, 4a to 4d for discussio Issue No.4c is a replica of issue No.3. Amongst the contenti raised by Defendant, one is that the suit as framed against the Union of India is not tenable.relying on Section 176 of *o.p.20. the Government of India Act, 1935,.Now this is a procedural Section and provides that the Federation may sue or be sued b the name of the Federation of India and a provincial Govern-ment may sue or be sued by the name of the province, and, without prejudice to the subsequent provisions of this chapte may, subject to any provisions which may be made by Act of th Federal or Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council

this Act had not been passed. Since the present suit is for damages, incurred by the rash act of a Military driver, against the Federation of India, as provided by Section 176 of the Government of India Act, 1935, which was the act in force when the suit was filed, in my opinion, the suit as filed is quite in order and competent to the Plaintiff.

10. It is on issues 4b and 4c that the Government pleader has focussed his attention nextly and concentrated a good deal of his arguments. His contention is briefly as follows:- That the Military Truck was plying on Military purposes and was not directly under the orders of Government; the act complained above was done besides in the exercise of the Sovereign powers of Government and the driver's alleged negligence does not confer any right in tort since the principle of master being liable for the faults of his servant does not extend to servants of the Crown or State. Defendant would have been liable if the Military action had been ordered by Defendant or ratified by Government Besides it was not a commercial action on the part of the Military and these acts have got to be distinguished from administrative acts of the State. In this connection I have been referred to a snate of authorities by the Government pleader. This knotty point in all its aspects, however, has been concluded by a recent ruling in LI B.L.R. P.V.Rao Vs. Khushaldas Advani at page 342. It is not therefore necessary in my opinion o refer to the other rulings relied upon by the defence. The facts f that case were briefly these: One Abdul Hamid was a tenant of flat in building known as "Paradise" whose landlord *was Dr.Vakil. n 29th January 1948 the tenant Abdul Hamid assigned his tenancy to he petitioner and two others- refugees from Sind. On 4th February 948 the petitioner went into possession of the flat. On 26th February 948 the Government of Bombay issued an order requisitioning the flat nder Section 3 of the Bombay Land Requisition Ordinance V of 1947. e order purported to be issued by order of the Government of bay and was signed by P.V.Rao, Secretary to the Government of bay, Health and Local Department. On the same day the landlord informed by Mr.Rao about the allotment to one Mrs.Dayaram a

*o.p.21.

refugee from Sind. On 27th February 1948 the Government of Bombay in exercise of the powers conferred by Section 3 of the Ordinance, authorised an Inspector of Health and Local Government Department to take possession of the premises. On 4th March 1948, petitioner filed a petition for certiorari and an order under Section 45 of the Specific Relief Act. On that petition an interim injunction was granted restraining Government from obtaining possession of the flat. Originally the petition was directed only against the Assistant Secretary; by subsequent amendment the Province of Bombay and Mr.Vartak were brought on record. Mr.Justice Bhagwati granted the petitioner's prayer. An appeal was preferred against that. We are not concerned with the question whether the requisitioning of the premises in question was a judicial or quasi-judicial order which was one of the defences taken. With regard to the Province of Bombay it was argued before Their Lordships C.J. & J.Tendolkar that the Provincial Government cannot be brought before the Court and be sued in respect of any Governmental or executive acts. It was contended that Government could only be sued in respect of such acts as can be performed by an individual or by a trading corporation. When Government acts as a Sovereign authority its acts are outside the purview of Municipal Courts and cannot be questioned in those Courts. These are the selfsame arguments now addressed to me. In the opinion of the Lordship, the Chief Justice that was a startling proposition and if that view was accepted it meant that

o.p.
*22 *Courts of *law cannot compel Government to justify its acts as being within the law and cannot give any protection to the subject if Government affected its rights or imposed any liability contrary to the provisions of the law. It would completely undermine the position of the Judiciary and deprive the subject of its one sure and certain protection against the illegal and unjustifiable encroachment of the executive. His Lordship thereafter went on to discuss how the proposition was wholly untenable and entirely contrary to the basic principle of jurisprudence. The Privy Council in Eshugbayi Eleko Vs. Government of Nigeria, were considering the

executive acts of Governor of Nigeria who had issued an order against an appellant to leave a specified area ordering his deportation to another place if he failed to comply. Lord Atkin in delivering judgment used caustic utterances, in keeping with the High traditions of British Judges "....no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of Justice. And it is the tradition of British Justice that Judges should not refrain from deciding such issues in the face of the executive." In his Lordship's opinion the Advocate General's submission was based on Section 176 of the Government of India Act. That Section is procedural. Prior to its enactment the Secretary of State for India in Council might have sued or be sued in the like cases. The history of that Section was thereafter traced. The East India Company was made a trustee of the Crown in respect of the properties which it possessed in India and with regard to all the debts and liabilities of the Company were charged upon the revenues of India. When the Indian territories were transferred to the Crown, Act- 1858 came to be enacted. Section 65 of that Act directed that the Secretary of State for India in Council should and might sue and be sued as a body corporate, as could have been done against the East India Co. Therefore in all those cases wherein the East India Co could have been sued, the Secretary of State for India in Council was substituted. Section 32 of the Government of India Act, 1915 continued the same provision. *In the Government of India Act, 1936 we find that the Dominion of India and the different provinces were constituted juristic persons for the purpose of suing and being sued even as the Secretary of State for India in Council was under the earlier Legislation. The province of Bombay therefore was in direct line of succession to the East India Co. The Government pleader in this suit even as the Advocate General in Rao Vs. Advani has urged that the East India Co. performed two separate and different functions as a trading corporation and as a governing body exercising Sovereign authority. His submission is that it is only with regard to acts that fall under the first category that the East India Co. could be sued.

For this, he places reliance on the famous case of P & O.N.O. Co Vs. Secretary of State for India. Their Lordships held there that the Secretary of State in Council of India was liable for damages occasioned by negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable. Certain observations by Chief Justice Peacock were relied upon. Chief Justice Peacock had made it clear in his judgment that East India Co was not a Sovereign body and did not have any attributes of Sovereignty. An act of State, according to our Chief Justice, operates extra-territorially and its legal title is the overriding sovereignty of the State. As between a Sovereign and its Subjects, His Lordship held that it was difficult to conceive of an act of State. If Government justifies its acts under colour of title and that title arises from a Municipal law that act can never be an act of State. Its legality and validity must be tested by Municipal law and in Municipal Courts. It is only an act not affecting to justify itself on grounds of Municipal law which is immune from the scrutiny of a Municipal Court. The acts of State to which the Municipal Courts are debarred from taking cognisance are acts done in the exercise of Sovereign powers which do not profess to be justified by Municipal law. Where an act complained of is professedly done under the sanction of Municipal law and in the exercise of powers conferred by that law, the fact that it is done by the Sovereign power and is not an act which could possibly be done by private individual does not oust the jurisdiction of the Civil Courts. Certain remarks of Chief Justice Peacock were the only slender foundation for the contentions put forth by the Advocate General, which were however considerably shaken by the views expressed by the Privy Council in R. Venkatrao Vs. Secretary of State for India, 39, Indian Appeals 55. There the appellant had sued the Secretary of State for India in Council for damages for wrongful dismissal. The Courts in India relied upon Section 32 of the Government of India Act as limiting the right of the appellant to sue the said Defendant in those identical cases where a suit would have lain against the East India Co. Their

Lordships of the Privy Council say that they should not be taken to give assent to that reason observing that they look upon that Section as merely procedural and if an action lay against Government that right could not be taken away merely because an identical right of action did not exist against the East India Co. In his Lordship's opinion if the Peninsular case laid down that the rights of subjects to sue Government was limited by any consideration as whether the East India Co. could or could not sue as a trading corporation, that was not the correct statement of the law. Justice Tendolkar who formed the Bench along with the Chief Justice has also dealt with this question at considerable length. There were 3- 4 grounds urged against the issuing of a writ of certiorari against the Province of Bombay, 1) Any act of the Provincial Government is an act of State being the act of a Sovereign and cannot be questioned in the Sovereign's own Courts, (2) High Courts never had jurisdiction to entertain a writ against the Provincial Government (3) there is immunity conferred by law in the Governor and therefore on the Provincial Government. We are only concerned with the first plea. Such a plea was traced to have been raised for the first time in 1859 in the case of *Secretary of State for India Vs. Kamatibai Saheba. In that case upon the death without issue of the Raja of Tanjore who had Sovereign relations with the East India Co. the director of the Company declared the Raj to have lapsed to the British Government with the concurrence of the Central Government, Madras Government appointed a Special Commissioner to deal with questions arising out of the extinction of the Raj. The widow of the Raja filed a Bill against the East India Co in the Supreme Court of Madras and the Court granted an injunction against the Special Commissioner from proceeding with the intended sales. The defence was that the seizing of the property was an act of State and Supreme Court could not enquire into it. From the observation of Their Lordships the true test as to what acts of a Sovereign cannot be questioned can be gathered. These are acts not affecting to justify themselves on grounds of Municipal law. His Lordship went to state that certain passages in the judgment of Chief Justice, Peacock had given rise to a good deal of misapprehension on which many decisions of the Indian Courts had thereafter been based.

*o.p.25

Briefly the contention put forth was that while the East India Com. could be sued in respect of its commercial dealings it could not be sued in respect of acts done by it in discharge of rights of Sovereignty delegated to them. While the former proposition is indisputable, the latter is partially true. The Company is no doubt liable in respect of acts of State directly so-called. But the immunity does not extend to acts done under colour of legal title although they may be acts in discharge of Governmental functions in exercise of the rights of the Sovereign delegated to the Co. After reviewing several authorities, in his Lordship s opinion acts of the Provincial Government which were purported to be done under the provisions of any Municipal law were liable to be questioned in Municipal Courts. It may be recalled that the circumstances that have given rise to the present litigation was rash and negligent *driving by a Military driver in the discharge of his duties. That was not an act of State. Even in the case of the P & O.S.N.Co Vs. Secretary of State for India, damages claimed owing to negligence of the servants of Government were awarded. According to Their Lordships in Rao Vs. Advani, the distinction made by Courts in India about Commercial dealings and acts done by Government in the discharge of rights of Sovereignty delegated to them is baseless and no immunity extends to acts done under colour of legal title although there may be acts in discharge of Governmental functions in exercise of the rights of Sovereignty delegated to the Company. Here the action of the Military driver not being an act of State no immunity can be sought and hence the plea put forth by the Government pleader has got to be negatived. I wish to repeat again that since this authority covers all the points that have been raised by the Government pleader, I do not think it necessary to refer to the many rulings relied upon by him in support of his view which I have all been overruled by this ruling. It may be noted that the Supreme Court has not overruled this part of the judgment though anent the nature of the order passed

*o.p.26

the Supreme Court has taken a different view. Hence my findings as given above on issues 4b and 4c, as well as on issue no.3.

11. As regards issue no.4d, Defendant has given up this part of its contention. It was originally contended that Plaintiff's truck being insured against 3rd party Plaintiff had no cause of action of defence. Hence my finding on this issue.

12. Plaintiff is entitled therefore to a decree for a part of the amount. Defendant do pay Plaintiff Rs.800/- and proporationate costs of the suit on or before 31st March, 1952.

Defendant to bear its costs.

30th January, 1952. Sd.S.G.J.D'Costa,

Civil Judge, Senior Division.

In the Court of the District Judge, Kanara.

Civil Appeal No. of 1952.

Union of India ...Appellant (Original Defendant).

Vs.

Venkatrao Upendra Shenvi, age 50, contractor, and motor bus owner, residing at Ankola ..Respondent(Orig.Plff

Claim:- Rs.800/-.

The appellant begs to appeal against the decree and judgment passed in Civil Suit No. 89-1950 on 30-1-52 by Shri S.G.J.D'Costa, Civil Judge, Senior Division, Karwar on the following among other:-

Grounds.

1. The decision is contrary to law and facts of the case.
2. The lower court is wrong in holding that the accident had been caused by the appellant's driver due to his rash and negligent driving.
3. The discrepancies between the case in the plaint and the one made in Ex.41 have been wrongly brushed aside.
4. The lower court did not consider in proper light the delay in lodging information Ex.41 with the police.
5. Material discrepancies between the evidence of the plaintiff and of his driver have been wrongly ignored.
6. Failure to seek the help of the police officers of the nearest police outpost at Sunksal has not been properly interpreted.
7. It should have been held that the information in Ex.41 had been lodged late at Ankola Police Station with a view to obtain sufficient time to change the position of the plff's vehicle overnight.
8. The contents of the panchanama have been wrongly relied upon by the lower court as binding on the appellant.
9. The lower court is wrong in holding that the appellant was bound by these contents simply because the panchanama had been produced by the appellant's pleader.
10. The unreported case relied upon by the respondent has been wrongly held applicable to the facts of the present case.

11. The lower court failed to consider the fact that the object of producing the panchanama in the present case was to disprove the respondent's case as revealed by the panchanama.

12. The lower court failed to consider the fact that at the earliest opportunity local inspection had been sought to disprove the contents of the said panchanama.

13. It should have been held that Ex.41 had not been filed with bona fide intention but with a view to establish a claim for damages as admitted by the respondent.

14. Adverse inferences should have been drawn against the plff on account of his failure to examine the head constable who had drawn the panchanama.

15. The lower court has wrongly thrown the burden of proof on the appellant to prove that the accident was not due to rash or negligent driving of the respondent's driver.

16. The lower court has drawn wrong inferences against the appellant simply because the military truck did not wait till the panchanama.

17. The lower court is wrong in holding that it was the duty of the military officer to give the intimation of the accident at Sunksal and that he should not have left the scene of accident with his truck before the arrival of the police.

18. The fact that there was no material damage to either of the busses and no loss of life should have been considered.

19. The explanation offered by the appellant's witness that he did not know of the existance of the Sunksal out-post has been wrongly ignored.

20. The learned judge has not properly weighed the case made out in the notice issued under section 80 of the C.P.C. and the case made out at the trial.

21. The lower court failed to appreciate the fact that if the measurements given in the panchanama were correct there would not have been any accident at all or the accident would not have resulted in damage to both the trucks on the right side.

22. The lower court is wrong in awarding damages to the extent of Rs.800/-. It should have been held that the bill of the mechanic was a bogus one.
23. The failure of the respondent to produce vouchers ough to have been considered.
24. Having held that the bill was a faked one the lower court ought not to have awarded the damages on mere surmises.
25. It was wrongly held that the bus had remained idle for 17½ days.
26. The lower court ought to have held that the notice issued under section 80 C.P.C. did not disclose any cause of action against the appellant.
27. It should have been held that notice was not legal and valid.
28. The lower court ought to have held that the respondent had made out a new case at the trial which was not supported by Ex.44.
29. It should have been held that the military truck was engaged on military duty and as such the appellant was not responsible for the act complained of.
30. The lower court failed to consider the fact that it was not a commercial action which was the subject matter of this accident.
31. The lower court has not properly considered the law on the point.
32. The Ruling in 51 B.L.R. at page 342 has been wrongly relied upon.
33. The lower court failed to appreciate the fact that this Ruling had been overruled by the Supreme Court.
34. The lower court is wrong in not taking notice of the rulings relied upon by the appellant's pleader some of which refered to the decisions of the Federal Court and the Supreme Court.
35. It should have been held that the appellant was not responsible for the act of State resulting in a claim

36. The lower court is wrong in holding that the military driver was not engaged at the time of the accident in an act of State and that no huminity could be sought by the appellant.

Note of limitation:-

Although the judgment was delivered on 30th January 1952 the decree was not ready till 14-2-1952 The certified copies were applied for on 1-2-1952 and were not ready till 26-2-1952. Hence this appeal is in time.

Prayer : One week's time may please be granted to pay the deficit court fee stamps.

Bhimrao

Karwar, dated 2nd April 1952.

L. R. 8 APR E

District Government Pleader, Kanara.

No. 154 of 1952.
Karwar, dated 2nd April 1952.

Forwarded with compliments to the R.L.A. Bombay with reference to his telegrame dated 25th March 1952.

Bhimrao

Dist. Govt. Pl. Kanara.

No. 8219.

OFFICE OF THE REMEMBRANCER OF LEGAL AFFAIRS:

Bombay Castle (Bombay No. 1), 24th May 1951.

Subject.—Kanara Civil Suit No. 89 of 1950.
V. U. Shanvi *vs.* The Union of India.

MEMORANDUM.

The District Government Pleader, Kanara at Karwar, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance.

Papers of the case in file one received from the A. A. Q. M. G. accompany.

Original

S. R. KAPREKAR,
for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara at Karwar (with two copies of the brief).
*The H. Q. Bombay Area, Colaba, Bombay 5.
*The H. Q. Poona Sub-area, Poona.

*With a copy of the brief.

K Leg H-116—1

Submitted for signature.
30/6/54
Sdh (SM)

30/6

Subbd. after issue

File in S. Kanara/57

24/7/58

SS

functions, which are even today exercised by the Government of India namely, (1) the exercise of sovereign rights and (2) the carrying on of transactions which could have been carried on by private individuals. In the former case the East India Company was generally exempt from liability." The Bombay case and the Madras case above referred to, have been followed in 1943 Nag. 287, Secretary of State *vs.* Nagorao Limbaji, which lays down the same principles for guidance. It follows, therefore, that if the Act complained of by the plaintiff is a Governmental function or an exercise of sovereign power, the Government of India or the Union of India will not be liable for such act, however negligent it may be.

2. In this case the Military lorry Veh. No. 483744 was plying for some military purpose. It is clearly an act in exercise of sovereign right. It should, therefore, be contended that the Union of India is not responsible for the accident. Hence the suit is not tenable.

3. Besides, it has been held in Allahabad Full Bench case 21 All. 341, (Secretary of State *vs.* Sukhedo) that the plaint must disclose a cause of action against the Secretary of State in Council, for the purpose of fastening liability on the defendant. The present suit also, labours under the same defect. In paragraph 6 of the plaint, the plaintiff has described the cause of action for this suit. But he, nowhere, mentions, any grounds on which liability for compensation can be fastened on the Union of India. It should be contended that as the plaint discloses no cause of action against Union of India it should be rejected.

4. It is alleged in paragraph 2 of the plaint that the accident was solely due to the fault of the military lorry driver. All allegations of this type should be specifically denied. It seems from the plaint that the civilian vehicle driver was prosecuted for rash and negligent driving. The Court of Inquiry held by the Army Officer, in respect of this accident is of opinion (vide p. 25 from the evidence recorded) that the civilian truck driver was criminally negligent in driving and that resulted in the accident. The Union of India is, therefore, not responsible to the plaintiff's claim.

5. It is alleged in the plaint that the criminal prosecution against the driver failed and the Magistrate has made certain remarks regarding the Military Vehicle Driver. The judgment in a criminal case is not admissible in evidence in a civil suit between third parties. Besides, whatever finding, the criminal court may have arrived at on the evidence before it, will not be binding on the civil court. Remarks, if any, in the judgment of the Criminal Court are "Obiter Dicta" and cannot form the basis of a claim in a civil suit.

6. Damages claimed are excessive and should not be admitted.

7. By the by it may also be contended that the civil truck was insured against Third Party Risk. The plaintiff has, therefore, no cause of action for this suit.

For these reasons it should be urged that the suit fails and should be dismissed with costs.

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KANARA CIVIL SUIT No. 89 OF 1950.

Chronological Statement of Facts.

1. This is a suit against the Union of India for Rs. 2,400 with future interest at 6 per cent. by way of compensation in respect of damage caused to the plaintiff's lorry in collision with a Military Vehicle.

2. It is alleged in the plaint that the plaintiff is the owner of Motor Truck No. BYX 590. He was plying the said truck for hire and had engaged a driver for the purpose.

3. On 10th February 1948 there was a traffic accident involving W. D. Vehicle No. 482744 and the plaintiff's truck, resulting in damage to plaintiff's truck. The Military Vehicle and plaintiff's truck were being driven in opposite directions on Karwar-Bellary Road, on that day and the accident took place on a slope on the said Road.

4. The plaintiff claims Rs. 1,880-10-0 as cost of the repairs to his damaged truck, plus Rs. 613-8-0 as loss of earnings for 17½ days at the rate of Rs. 35 a day. In all he claims Rs. 2,400 with future interest.

5. It is alleged in the plaint that plaintiff's driver was prosecuted for rash and negligent driving in a Criminal Court but was acquitted.

6. The plaintiff, therefore, served on 6th February 1950, the Secretary to the Defence Department, Union of India with a notice of suit under section 80, Civil Procedure Code and he filed this suit in the Court of Civil Judge, Senior Division, Karwar.

7. It is contended by the plaintiff that the Military Vehicle driver was driving his vehicle at a high speed on a wrong side and he dashed his vehicle against the civilian truck. The accident according to plaintiff is entirely of the Military Driver's making. Hence this suit for compensation.

Grounds of Defence.

1. The point for consideration in this case is whether the Union of India is liable for the illegal acts, if any, of their servants. In 1948, when the accident took place, the Government of India Act, 1935 was in force. The liability or otherwise of Government of India in respect of the illegal acts of their servants will, therefore, be governed by the relevant provisions of the said Act. Section 176 of the Act says "The Government of India may sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued as if this Act had not been passed". This question, has also received full, judicial attention. The first well known case in point is "P. & O. S. No. Co. *vs.* Secretary of State for India". 5 Bom. C. R. Appendix I. This case is followed in I. L. R. 39 Mad. P. 351. The Secretary of State for India in Council *vs.* A. Cock-craft. It is held in both these cases that the liability of the Secretary of State for India in Council is similar to that of the East India Company. It is further observed therein "The East India Company had two distinctive

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89

Received on 2nd April 1952.
Registered on 15th April 1952.
Decided on 31st December 1955.
Duration 3 years, 8 months & 29 days.

Exhibit no. 8.

In the District Court of Kanara,

At Karwar.

Appeal No. 67 of 1952 from Decree in Civil Suit no. 89 of 1950 of the Court of the Civil Judge Shri. S.G.J.D'Costa of Karwar.

Pleaders.

The Government Pleader. — Union of India. .... Appellant. (Original Defendant)

Against.

Shri. P.S.Kamat. — Venkatrao Upendra Shenvi, contractor and motor bus owner, residing at Ankola. ... . Respondent (Original Plaintiff)

Claim Rs. 800/-

The Union Government of India has preferred this appeal against the judgment and decree of the Civil Judge, Senior Division, Karwar, awarding Rs. 800/- with proportionate costs to the Plaintiff- Respondent in an action for - damages as a result of a motor accident alleged to be due to the reckless and negligent driving by the driver of a military truck.

* o.p.2

2. The Respondent instituted the action on 12th April 1950 claiming Rs. 2400/- by way of damages. He alleged ~~this~~ (1) that his truck No. BYX 590 had been registered as a public carrier and that one Abdul Khadar Shaik was the driver of his truck at the date of the accident on 10th February 1948. He alleged that when his truck was - plying on Karwar-Bellary road going towards Karwar, the Defendant's military truck W.D.482744 coming from the -

opposite direction and going to Belgaum at a high and reckless speed dashed against the Plaintiff's vehicle by coming on the wrong side and caused damage. The Plaintiff's truck was on the proper side of the road and his driver stopped his truck by applying his brakes. Even though the accident was due to the rash and negligent act of the military driver, the Plaintiff's driver was prosecuted under the Motor Vehicles Act in criminal case no. 75 of 1948 and was finally acquitted by the Magistrate. The Plaintiff had to spend Rs. 1880-10-0 for the repairs of his truck and had to keep his vehicle idle from 10th February 1948 till 28th February 1948 which resulted in a loss of Rs. 612-8-0 at the rate of Rs. 35/- per day which the Plaintiff was getting from his contractor. After remitting Rs. 94-2-0, the Plaintiff claimed Rs. 2400/-. He mentioned that he had served the Union Government with notice on 6th February 1950 as per section 80 of the Code of Civil Procedure. The cause of action was mentioned as having arisen on 10th February 1948.

3. The Defendant filed his written statement at exhibit no. 14. He admitted the accident but denied the allegation of the military vehicle being driven at high and reckless speed and on the wrong side. He denied that the Plaintiff's driver applied the brakes and stopped his vehicle. According to him when the truck was being driven in opposite direction with the hill on the one side and a valley on the other, the Plaintiff's truck came from the opposite direction suddenly and in the centre of the road without sounding any horn or applying any brakes and caused the accident. He alleged that the Plaintiff's driver had not taken the necessary precaution to avoid the accident * and that by his conduct he was guilty of contributory negligence. He denied the alleged damage

* o.p.3

83 + 95

and the expenses of Rs. 1880-10-0 said to have been spent for the repairs. He also denied the alleged loss of Rs. 35/- per day and pleaded that the charge claimed were imaginary and excessive. The Defendant further pleaded that the notice under section 80 of the Code of Civil Procedure was defective and invalid and that the Defendant was not liable for the acts of the driver. He asserted that the proper remedy of the Plaintiff was to file a suit against the driver himself and his claim against the Union Government was untenable. He also contended that neither the notice nor the plaint disclosed any cause of action against the Defendant and that the plaint was liable to be rejected on that ground

* sic

He requested in his written * that that point should be tried as a preliminary issue. He also contended that the military truck was plying for military purposes in exercise of the Sovereign powers of the Government, that the act complaint of was an act of State and that the Plaintiff had no cause of action against the Defendant . He further asserted that the Defendant was not liable for the act of a servant working in the military as he had neither ordered him to ply the truck nor ratified his action. For these reasons the Defendant disclaimed his liability to the Plaintiff and prayed for dismissal of his suit.

4. The learned trial Judge framed 9 issues at exhibit no. 17. On the evidence he held that the accident was caused by the rash and negligent driving of the Defendant, that there was no contributory negligence on the part of the Plaintiff's driver, that the Defendant was liable for the accident, that the suit was maintainable against the Union Government, that the act complained of was not done in the exercise of sovereign right, that the Defendant was liable for the act of his servant, that the Defendant had failed to prove his exemption from liability on the

* o.p.4

ground that the Plaintiff had * insured his truck, that the

plaint and the notice disclosed the cause of action, that the notice was legal and valid and that the Plaintiff was entitled to Rs. 800/- by way of damages.

5. The learned Judge has accordingly passed a decree against the Appellant on 30th January 1952.

6. The Defendant has preferred this appeal and the points argued by the learned Government Pleader on behalf of the Union Government are:-

(1) Whether the accident was due to the negligence of the Defendant's driver?

(2) If yes, what amount should be awarded to the Plaintiff for damages?

(3) Whether the Defendant is not liable for damages on the ground that the act complained of was committed in exercise of the sovereign powers of the State?

(4) Whether the Union Government is liable for the tortious act of the military servant?

(5) Whether the plaint and the notice disclose a cause of action against the Defendant? Is the suit not tenable on that account?

6) What order?

My findings are:-

(1) Yes;

(2) Rs. 500/-.

(3) It is not an act of the State.

(4) No;

(5) No; Yes.

(6) Appeal to be allowed.

R e a s o n s.

7. The facts which have given rise to the litigation are simple. The Plaintiff's truck BYX 590 was coming from Yellapur side on the Hubli -Karwar road while a military truck No. W.D. 482744 driven by a military driver was going

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* o.p.5 towards * Belgaum from Karwar on 10th February 1948. At about 3 p.m. there was an accident at a distance of 33 miles 7 furlongs from Karwar as a result of which the - Plaintiff's truck suffered certain damage. It is common ground that the Plaintiff's driver Abdul Khadar Shaik Ahmad was prosecuted (exhibit no. 42) by the police under the Motor Vehicles Act, but was acquitted. Thereafter, the - Plaintiff issued a notice (exhibit no. 44) to the Secretary to the Union Government in the Defence Department on 6th February 1950 stating that the accident was due to the high and reckless speed at which the motor truck was driven and that he should be paid Rs. 2400/- by way of damages. The Defendant denied the alleged negligence and pleaded that the plaint and the notice did not disclose any cause of action against the Union Goverhment, that the act complained of was an act of State, that the Union Government was not liable for the negligent act done by its servant, that the amount claimed was excessive, that the Plaintiff's driver himself had contributed by his negligence to the accident, that the notice was invalid and he was not liable for the claim of the Plaintiff. The learned trial Judge rejected all the defences, assessed the damage at Rs. 800/- and passed a decree in favour of the Plaintiff.

8. So, the first question which we have to decide in the appeal is as to whether the Plaintiff has proved that the accident was due to the rash and negligent act of the military driver. It may be noted at the outset that the Plaintiff has given an improved version of the accident in his plaint. He stated in paragraph 2 that the military vehicle " was driven at a high and reckless speed" and that it collided against the Plaintiff's vehicle. Thereafter it is stated that " the motor truck driven was on the wrong side and though the Plaintiff's driver applied brakes and stopped the plaint vehicle, the (2) motor truck dashed

against the plaint vehicle and caused the accident complained of ". These * are also the allegations made in the notice (exhibit no. 44). Exhibit no. 41 is the complaint which was lodged by the Plaintiff with the police on 10th February 1948 at 8-30 P.M. Therein he has only stated that the motor truck came from the wrong side and collided against his truck. There is no mention of driving the motor truck with high and reckless speed. The Plaintiff was examined at exhibit no. 39. Obviously, he has no personal knowledge and his evidence on the point must necessarily depend upon what was reported to him by the driver immediately on his arrival at Ankola. The Plaintiff stated that his driver told him that the military truck had dashed into his truck by coming on the wrong side and that was all that he had told him. Not only that, the Plaintiff admitted that he did not instruct his pleader to state about high and reckless speed in the plaint. This admission clearly goes to show how the pleadings in the plaint do not disclose the true state of affairs. Abdul Khadar (exhibit no. 42) - deposed that he was on the proper side, that the Defendant's truck came from the wrong side and dashed into his. He - further stated that on account of speed and the impact his truck was pushed back by about 5 feet and the radiator was cracked. In his cross-examination, he stated that - immediately on his return, the Plaintiff took him to the police station where his statement was recorded at exhibit no. 41. He further admitted that he did not remember if he referred at that time to the wrong side and excess speed. He further stated that his truck was at a stand still at the time of the collision and that he had applied brakes to his truck. He further stated that the Defendant's - driver gave no horn. In brief the deposition of Abdul Khadar throws the entire blame on the military driver. The military driver himself has not been examined and Captain

* o.p.6

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Sadashiv Rao (exhibit no. 54) who was examined for the defence stated that he did not know the whereabouts of the driver as his services had been dispensed with. He however * o.p.7 stated that he * was in the vehicle as Assistant Recruiting Officer and their truck was running in fourth gear at moderate speed. He further stated that their driver applied the brakes, stopped the vehicle within two yards on seeing the Plaintiff's vehicle. So, the oral evidence on both the - sides is such that it throws the blame on the opposite party.

9. Under the circumstances we have to find out from the circumstances and the statements made by the witnesses as to which party was responsible for the accident. Exhibit no. 50 is the panchanama which was drawn (3) up by the police on 11th February 1948 the next day after the complaint (exhibit no. 41) had been filed. It mentions that the road at the scene of the accident measured 18 feet in width. It mentions that the distance on the right side from the front wheel and the back wheel of the Plaintiff's truck when it was standing was 12 feet 8 inches and 10 feet. The panchanama further mentions that on the left side there was a distance of 2 feet from the edge of the road to the back wheel; while the front wheel was almost on the brink of the road. The panchanama refers to the absence of marks of the application of brakes and to the presence of marks of military tyres at a distance of 2 feet from the edge of the right side of the road. The learned Government Pleader contended that the recitals of the panchanama were not true. It does appear that some of the recitals in the panchanama are not correct. The Plaintiff himself admitted in his cross-examination that his own truck was 7 feet wide and needed 8 feet space. In that event the recitals of the panchanama that 12 feet 8 inches of space was still left on the right side from the front wheel would not be correct. It was -

further stated for the Defendant that before the panchanama was drawn up on 11th February 1948 the Plaintiff's truck had been shifted from its position so as to support his case of the military truck driver being entirely in the wrong. It is an admitted fact * that at the time when the military driver left the scene immediately after the accident the Plaintiff's truck had gone out of order and was not in a position to work. The trial Judge was right in discarding the theory of the truck having been shifted to a favourable position over-night.

* o.p. 8

10. But for the discrepancy in the measurement I think the panchanama gives a true picture of the place where the accident occurred. It mentions that the right side head light of the Plaintiff's truck and the reflector had been broken to pieces. It also mentions that the mudguard on the right side wheel had been damaged and that the bumper had received an impact. It has been further mentioned that the radiator also received a strong impact and that the number plate in front of the bumper had become bent. There are certain other minor damages mentioned to the Plaintiff's truck. In this connection it is necessary to refer to the report (exhibit no. 55) which Sadashivarao submitted to his own department the next day regarding the accident. Therein he has admitted that the mudguard point on the right side had been displaced and damaged. He has also stated the right side head lamp had been reduced to pieces and that the front part of the bonnet had been displaced. He further stated that the drain-cock's valve was missing. So far as the military truck is concerned it mentions that the bumper was bent on right side, that the mudguard lying on the right hand side had been slightly damaged and that the front axle shifted by about 2 inches backwards on the spring. According to his own estimate the damage caused to the military is Rs. 38/-. So, if we read the description

8 8/204

in the panchanama and consider the nature of the damage that has been done to the Plaintiff's truck it is clear that the military truck must have come with some speed from the opposite side and must have dashed against the Plaintiff's truck. It may be noted that as mentioned * in the inspection notes of the trial court (exhibit no. 75) that at the place of the accident the road itself shapes into an "S" starting from the furlong stone in a slope and that there was a hill to the left as one goes towards Yellapur side and a valley to the right. Abdul Khadar and Sadashiv both stated that each of them stopped on seeing the other. Both statements cannot be true in as-much as there has been admittedly a collision. Abdul Khadar stated that on seeing the Defendant's truck at a distance of about 25 yards from the ~~xxxx~~ collision he applied the brakes to his truck. According to him his truck was at a stand still at the time of the collision and that as a result of the impact the truck receded back by about 5 to 6 feet. Sadashivarao admitted that " on compact the Plaintiff's lorry was thrown back 5 or 6 feet since it was on an ascent". So, it can be taken as an admitted fact that as a result of the accident the Plaintiff's truck receded back by about 5-6 feet and received greater damage than the military truck. Even if we discard Abdul Khadar's version that he had stopped the truck it would be evident that the Plaintiff's truck which is a heavy vehicle would not have receded back if it was going either at the same speed or greater speed than the Defendant's truck. In my opinion, the Defendant's truck must have come suddenly and dashed against the Plaintiff's truck. As observed above, the Plaintiff's truck has gone out of order immediately after the accident.

* o.p.9

11. Apart from these circumstances, there are certain important matters which require mention at this stage. It may be noted that the military truck did not

stop there for the panchanama. Abdul Khadar stated that even though he requested them to wait for the panchanama the truck went away. Sadashivrao's explanation is that they went away without waiting due to the presence of a * high official in their truck is not at all convincing. He admitted in his examination in chief itself that he noted the damage caused to both the vehicles in his book, prepared a sketch of the scene of the accident and noted the other details. He did not produce any of these documents. Even though he admitted that after the accident the Plaintiff's truck's engine had ceased working, he said that they made no attempt to see whether it was in a working order or not and that he did not also ask his own driver to test the same. In my opinion, the conduct of the driver of the military truck and the officers - going therein is more consistent with their guilty - conscience rather than with their innocence. There is absolutely no explanation as to why the documents - prepared immediately by the officer were not produced. Sadashivarao's statement that his driver saw the Plaintiff's truck at a distance of 5 to 6 yards and applied brakes hardly deserves to be believed. On the evidence I am satisfied that the trial Judge was right in holding that the military driver was responsible for the accident by driving on the wrong side and probably with greater speed than normal.

* o.p. 10

12. The next question is as regards the - assessment of the damage. The Plaintiff produced a bill at exhibit no. 46 to show that he had spent Rs. 1880-10-0 towards the repairs. The learned trial Judge has discussed this part of the evidence and has rejected the receipt as wholly unworthy of credit. No effort was made by the learned pleader for the Respondent to place any reliance on the recitals of the receipt. If the receipt is

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considered in the light of the evidence of the Plaintiff and the mechanic Govind Annappa (exhibit no. 43) who passed the receipt, it will be evident that the receipt is prepared for the purpose of the present suit. It is interesting to note that the mechanic even admitted that when the truck was sent to him he did not know that it had

* o.p.11 * met with an accident. This clearly means that in all probability the truck was not sent to him. There is another point which falsifies the evidence of Govind. According to the Plaintiff he paid Rs. 150/- to the mechanic for towing the truck from Sunksal to Belgaum. At another place he stated that the truck was first taken to Ankola and thereafter to Belgaum. Govind stated that the truck was towed from Sunksal to Belgaum and that he did not estimate the charges in the (4) beginning. If in the light of these statements we note that the bill exhibit no. 46 mentions Rs. 150/- as towing charges, we will be convinced that the receipt has been prepared with imaginary figures. Govind stated that he had purchased the spare parts. But neither accounts, nor vouchers have been produced. I, therefore, agree with the trial Judge inholding that the receipt cannot be relied upon.

13. The learned Government Pleader contended that the Plaintiff had not produced any reliable evidence to prove the extent of the damages and that the recitals of the panchanama which had been believed by the Trial Court ought not to have been relied upon. It must be conceded that the Plaintiff has not produced any accounts or vouchers to show what was the actual amount that he spent. The learned Judge expressed at the end of paragraph 7 that according to his view the truck was towed to Ankola and repairs were effected by the Plaintiff in his own garage. That appears to be the truth. That also explains

for the absence of vouchers from mechanic Govind. The Plaintiff's statement that he had not kept accounts cannot be believed as on his own admissions his total out-turn was Rs. 10000/- to Rs. 20000/- per year. I have mentioned the damage which the truck had suffered. The panchanama which was produced by the Defendant mentions the damage as having been estimated by the panchas and the police at Rs. 400/-. The Government pleader contended that he had produced the panchanama only to falsify the story of the Plaintiff as regards the allegation of - negligence and that unless the recitals of the panchanama were proved and the details of the damage suffered were established, the Plaintiff could not rely upon that - document. The panch witness Anant (exhibit no. 51) was examined to state that the contents of the panchanama were true. He stated that all the damage was pointed out by the Plaintiff and noted in the panchanama. When cross-examined on the Plaintiff's contention that his estimate of the damage was Rs. 2500/-, Anant retracted and stated that he also assessed the amount at Rs. 2000/- but that he did not object to the mention of Rs. 400/-. This - explanation is an after-thought and not worthy of any credit. Besides, the obvious damage mentioned above, it has transpired in the evidence that the radiator had - cracked as a result of the impact and that the engine itself had gone out of order. I think much of the difficulty in this direction would have been solved had the military driver and the other officers in the truck stayed on to assess the damage. Taking all facts into consideration I think the trial Judge's view to accept Rs. 400/- as damages appears to be equitable. #o.p.12

14. The learned Judge has further awarded - Rs. 100/- for towing charges. But there is no proof. The truck seems to have been towed only to Ankola and I do not

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think that the Plaintiff could have incurred anything more than Rs. 50/- for the purpose. The Plaintiff has further been allowed Rs. 300/- as loss for business as he was required to keep the truck idle. The Plaintiff stated that he had to keep the truck idle for about 18 days and that he would have otherwise earned Rs. 35/- per day. He examined one Manohar Padmanabh (exhibit 52) who stated that he had taken a P.W.D. contract in 1952 and that he had engaged the Plaintiff's truck on Rs. 35/- per day. He did not produce any writing or account to prove the payment or the alleged contract to show that his truck was really earning as much amount every day. In my opinion, the entire repairs might not have required more than 2-3 days in the Plaintiff's own garage and I think a further amount of Rs. 50/- would be sufficient to cover the loss. In my opinion, the evidence adduced by the Plaintiff will not entitle him to more than Rs. 500/- as compensation for the loss suffered by him in the accident.

15. The most important question in the appeal is as regards the Defendant's liability for the Plaintiff's claim. The Union Government has contended that the accident occured during the course of the performance of an act of State and that the Government was not liable for the damages. The second ground on which exemption from liability was claimed was that the Government was not responsible for the tortious acts of its servants. The learned trial Judge did not separately discuss these issues but rejected the contentions holding that the decision of our High Court in Rao Vs. Advani (51 Bom. L.R. 342) was a sufficient answer to the Defendant's contentions.

16. As regards the first contention, the Government Pleader contended that even according to the recitals of the plaint the truck was being driven by a military driver in the course of his duty, that the Plaintiff himself

had admitted in his examination in chief that the military truck was doing recruiting work and was driven by a military man and that those admissions were sufficient to hold that the recruitment was an act of State and that the Defendant was not liable for the accident that had happened. I am - unable to appreciate the force of this contention. I can concede that the recruitment itself is an act of State. The act complained of is not against recruiting so as to enable the Defendant to take shelter under the plea of act of State. The act complained of relates to an accident committed by the driver of a military truck. The learned * o.p.i Chief Justice succinctly laid down at page 395 of the - report in Rao vs. Advani what an act of State means:

> "An act of State operates extra-territorially. Its legal title is not any municipal law but the over-riding sovereighity of the State. It does not deal with the subjects of the State but deals with aliens or foreigners who can not seek the protection of the municipal law. It is difficult to conceive of an act of State as between a sovereign and his - subjects. If Government justifies its act under colour of title and that title arises from a municipal law, that can never be an act of State".

In that case their Lordships were construing the legality of an order made by the Government of Bombay under the provisions of the Bombay Land Requisition Ordinance. On behalf of the Government it was contended that the order being an act of State it was not justifiable and could not be questioned in a Court of Law. Their Lordships - rejected the contention on the ground that the order had been passed under a Municipal Law and as such it could not be regarded as an act of State as against a subject. In an appeal preferred by the Government of Bombay to the Supreme Court their Lordships of that court affirmed

the decision in Province of Bombay vs. Khushaldas Advani, (53 Bom. L.R. 1) holding that the act of requisition which is purported to have been done under the sanction of - Municipal Law and in exercise of powers conferred by such law could not be an act of State. In my opinion, this was the only point that was decided by their Lordships in that case and with due respect to the learned trial Court it did not decide the other points involved in the contention raised by the Defendant

17. In this connection, the learned Government pleader relied upon certain other decisions which it is * o.p.15 * necessary to mention. In R. Venkubai vs. The Secretary of State (39 Bom. L.R. 699) the Judicial Committee of the Privy Council had to deal with the dismissal of a Government servant. The question which their Lordships were called upon to decide was one arising under section 96(b) of the Government of India Act, 1915, which considered the liability of the Crown based on the doctrine that - every servant of the Crown holds his office during the - pleasure of the Crown. I am unable to see anything common between that decision and the facts of the present case. Reliance was placed on the decision in the Secretary of State for India in Council vs. Nagorao (I.L.R. 1943 - Nagpur 511). There the Plaintiff who was a head-constable and working as a chauffeur of one Chitham strolled into a prohibited area reserved for bombing practices of the - military. While wandering he picked up a metal object lying just off the track and hit it with a stone in order to open it. There was an explosion in which the Plaintiff lost - some of his fingers of the left hand. He instituted the suit claiming Rs. 2500/- as compensation against the Secretary of State for India in Council for the injuries caused. The suit was dismissed on the ground that the Secretary of State was not liable ~~fr~~ for any act done by a military or naval officer or by any soldier or sailor whilst engaged

in military or naval duty. The reasoning adopted there was that the practice of bombing was an act which was authorised by the sovereign power and that the Secretary of State was not liable as the act had not been authorised by the statute. In other words, it was held that the - provision for facility for bombing practices was a public duty undertaken by the State in order to provide a training for the army and that such duties were exercised by the state not for its emoluments or benefit but for the benefit and protection of the entire population. In my * opinion, the present case can be distinguished on the * o.p. 16 ground that the act complained of is not the direct - result of recruiting which is no doubt an act of State in the sense that it is authorised by the sovereign for the protection of the entire population. In the Secretary of State vs. Cockcraft (I.L.R. 39 Madras 351) the Plaintiff sued the Secretary of State in Council for damages in respect of the injury suffered by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was admittedly a military road maintained by the P.W.D. The Plaintiff's suit was dismissed on the ground that the provision and maintenance of roads was one of the functions of the Government and the undertaking was in exercise of the Sovereign powers. The last case relied upon in this - connection is the decision in Etti vs. Secretary of State for India (I.L.R. 1939 Madras 843). In that case the Plaintiff had taken his infant son to a Government - hospital for treatment. A few days later when he went to the children's ward to take back his child he was advised to bring a piece of rubber apparatus. But when he returned back with the apparatus he was told by the nurse on duty that the child had been taken away by some one else. He then sued the Secretary of State for damages for the -

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negligence of the hospital authorities. It was held that since the Government was maintaining the hospital for the benefit of the public at the expense of the public revenue in discharge of its proper functions as Government, in exercise of its sovereign power, the Secretary of State was not liable.

18. There can not be any doubt that most of these decisions have been based upon the principle laid down by the Judicial Committee in Peninsular and Oriental Steam Navigation Company vs. The Secretary of State for India (5 Bombay High Court Reports, 1 Appendix A). In * that case a servant of the Plaintiff was proceeding in a carriage drown by a pair of horses and the accident - occured at the dockyard where the servants of the Defendant were carrying across a public road iron funnel casing. On seeing the carriage coming near them the workmen threw down the casing as a result of which the horses got - frightened and one of them got injured. The Plaintiff sued to recover Rs. 350/- as damages. In that case their Lordships considered the question of the liability of the - Secretary of State for the acts of the servants working in the dock-yard. By referring to certain English statutes which defined the rights and liabilities of the East India Company, they laid down that as a general rule a State cannot be liable for damages occasioned by the negligence of its officers or persons employed in its service. This decision was founded upon the principle that the King can not be guilty of personal negligence or misconduct and consequently cannot be responsible for the negligence or misconduct of his servants. They further laid down that the East India Company was not sovereign and therefore could not claim all the exemptions of a sovereign but (5) that they were company of persons to whom some sovereign powers were delegated and who traded on their own account

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and for their own benefit and were engaged in transactions partly for the purpose of Government and partly on their own account. In referring to the sovereign acts their Lordships observed:

" But where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by a sovereign, or private individual delegated by a sovereign to exercise them, no action will lie" .

On the basis of these principles it was laid down that as the act complained of had been committed by the servants during the course of a commercial undertaking, the Secretary of State was liable. The other decision in this connection is that in Nobin Chunder Dev vs. The Secretary of State for India (I.L.R. 1 Calcutta, 11) which laid down that suits against the Secretary of State were limited to suits for acts questioning the conduct of undertakings which might be carried on by a private individual without sovereign power. * o.p.18

19. The question of the liability of the Government for the acts of his servants have been subsequently discussed in numerous cases by reference to both the decisions mentioned above. I may pertinently mention the decision in Uday Chand Mehtab vs. Province of Bengal, (I.L.R. 1947 Calcutta, 141 Volume II) where the Crown's vicarious liability for the acts and omissions of its servants was discussed. In that case, the Collector had wrongly paid the sale-proceeds of a patni sale to a person other than the one entitled to the amount. In a suit against the Government it was contended that the Crown could not be held answerable to the Plaintiff as the act was done by the officer in exercise of the powers conferred by a Statute. Chakravarti J. who delivered the judgment

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of the Bench summarised the law as follows:-

> The principles deducible from these and other cases, as we understand them, are as follows: A distinction must be made between acts done by the Crown in pursuance of ventures which a private individual might undertake equally well, and acts done in exercise of Governmental powers which could not be lawfully exercised save by the sovereign authority or persons to whom the sovereign authority might delegate those powers. Acts of a former class are mercantile operations or operations of like kind in which the East India Company actually engaged itself before and even after it had acquired sovereignity. The reason why an action lies against the Crown with reference to acts of this type is, on the one hand, a historical reason, because actions could in fact, be brought against the East - Company at the relevant time, and on the other hand, a statutory reason, because a specific provision, saving the right of action in such cases, has been made in all the successive - Government of India Acts. Acts of the second class fall under two categories. One class are acts of State, properly so called, such as - making a treaty, commandeering private property for war purposes, or quelling civil disturbances by force. Such acts are never justifiable in courts of law and since the Crown itself is not answerable for such acts in its courts, there is no principle upon which it could be made liable for the acts of its officers or subordinates. The immunity is absolute. The other class of - acts are those which are done under the sanction

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of some Municipal Law, or statute and in exercise of powers thereby conferred. This class can be sub-divided further into two classes: (i) those consisting in detention by the Crown of land, goods or chattels belonging to the subject and (ii) those done by officers of the Crown in the discharge of their official duties. With regard to acts of the first sub-class, an action would lie in the Courts in India, and it would seem that even in England, a Petition of Right would lie. With regard to acts of sub-class (ii) however, no action would lie except in cases there it can be proved that the impugned act had been expressly authorised by the Crown or that the Crown had profited by its performance. The reason why no right * of action lies except on proof of special authorization by the Crown is that, in the absence of such proof the act is considered to have been done in exercise of the power or the discretion vested in the officer by the relevant law and not in pursuanne of any implied authority derived from the Government".

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Another decision which clearly discusses the question is of the Madras High Court in Ross vs. Secretary of State (I.L.R. 37 Madras, 55) There the Secretary of State was sued for damages in respect of two orders passed by the District Magistrate of Gangam suspending and dismissing one of the local agents of the Labour Supplying Company under the provisions of the Assam Labour and Immigration Act. It was held that the Secretary of State was not liable for the claim as the act complained of had been done by a public servant in exercise of his powers under a Statute. The distinction between acts done in the exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which

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might be carried on without having such powers delegated to them was implied and it was laid down that where the act complained of is of a private nature and not done in the exercise of powers usually classed sovereign powers, the Government was liable for the negligence of their servants in the same way as any private employer in a similar case. The liability of the Crown with regard to tortious acts was laid down in the clearest of terms as follows: " While immunity of the Crown in respect of tortious acts committed by its servants has always been based on the legal Maximum that the King can do no wrong, yet the courts, in particular cases where, the act had neither been ordered nor ratified by the Crown, have been careful to point out that there was less technical ground on which such immunity could be justified, grounds which appear to be equally applicable to the East India Company.

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* So, what follows from these decisions is that an act done by a servant will make the Crown liable provided the act had either been ordered or ratified by the Crown. The position was summarised in a small passage in Story on Agency which was quoted in Uday Chand's case referred to above:

> The Government itself is not responsible for misfeasance, or wrongs, or negligences, or - omission of duty of the subordinate officers of agents engaged in the public service; for it does not undertake to guarantee to any person the fidality of any of the officers or agents whom it employs; since that would involve it, in all its operations, in endless embarrasments and difficulties and losses which would be subversive of the public interests".

It, therefore, follows that if the Plaintiff wants to hold the Union Government liable for damages it is necessary for him to show that the act complained of had been either

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authorised by the Defendant or had been ratified by him. The mere fact that the military driver was a servant under the Government is not sufficient to hold the Defendant - liable. It is only where there is proof of special authorization by the Crown of the act of the servant complained of that the Crown or the Government would be liable either for misfeasance or negligence. A decision of our High Court re-iterating the same principle is to be found in Shivabhajan vs. The Secretary of State (I.L.R. 28 Bombay, 314). There the suit was instituted against the Secretary of State to recover damages on account of the negligence of a Chief Constable in respect of the goods seized by him. In that case, the Plaintiff was given possession after the end of the criminal case only of some of the bundles of hay. The Plaintiff sued the Secretary of State for the price of the remaining bundles of hay on the ground that he had suffered ~~#~~ loss as result of the damage done by his servant. The claim was rejected on the ground that the act was done by the chief constable in performance of a statutory power vested in him by the Legislature and not in obedience of an order of the executive Government. It was further laid down that the seizure of the hay was not in any sense productive of the benefit to the revenues of the Bombay Government; nor was it in a transaction out of which profits could be derived. It was also rejected on the ground that " There has been no ratification or adoption of the act" My attention was also drawn to the decision in Rama Gulam Vs. The Government of U.P. (A.I.R. 1950 Allahabad, 206) where the question of liability of the Government for the tortious acts of the servant was considered and it ~~was~~ was held that the general principle that the master was liable for the acts of the servant applied to Government only in undertakings of commercial character and did not

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apply to acts which had either been done in exercise of the powers conferred by a Statute or under the authorisation of the Government. Baragraph 22 of the judgment laid down that " it was settled law that an action lies against the State in respect of tortious acts committed by Government servants when engaged in undertakings carried on by the Government but which could not be carried on by a private person without possessing sovereign powers". Paragraph 23 expressly referred to the rule embodied in the maxim respondiat superior and stated that it was subject to well-recognised expression that a master is not liable for the acts of the servant performed in discharge of a duty imposed by law. The latest decisions in District of Bhagalpur vs. Province of Bihar (A.I.R. 1954 Patna, 529) and Babulal vs. Province of Orissa (A.I.R 1954, Orissa. 225) re-affirm the same principle. The - Government pleader has also referred to certain other decisions in Maharani Gurucharan vs. Province of Madras (A.I.R. 1944 Federal Court, 41) and M.A.Kader Vs. The * Secretary of State (I.L.R. 9 Rangoon, 375) which do not lay down any new principle.

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20. So, on the basis of these authorities, I am of the opinion that the act complained of is an act of negligence by the driver of a military truck. It is not shown that this was an act which was either authorised by the Union Government or that it had been adopted or ratified by them. Under these circumstances, the Defendant is not liable to the Plaintfff. The proper course for the Plaintiff would have been to sue the person concerned and not the Union Government.

21. The next question agitated by the Government pleader is that the notice and the plaint do not disclose any cause of action against the Defendant. His grievance

is that there are no assertions either in the plaint or in the notice to show on what grounds the Blaintiff was trying to hold the Defendant liable. The plaint after referring to the details of the accident, the criminal case, the details of damages and the issue of notice deals with the cause of action in paragraph 6. It says: " the cause of action for this suit arose on 10th February 1948 at Sunksal village at Mile no. 33/7 Ankola Taluka where the accident occured which is within the jurisdiction of this Court ". There is absolutely no reference to the grounds on which the Defendant was sought to be held - liable. The learned pleader for the Respondent referred to the end of paragraph 2 of the plaint. The material part of itx says: " the alleged accident was caused - solely due to the negligent and rash act of the military driver in the course of duty" This is not a sufficient assertion. Every suit must disclose the bundle of facts on which the relief is claimed against the Defendant. Obviously, the claim is based for damages as a result of a wrongful act of the driver of a military truck. Therefore, it was * necessary for the Plaintiff to have stated in his * o.p.24 plaint the grounds and circumstances under which he was holding the Union Government liable, that is whether the act complained of had been authorised or ratified by the Defendant, these details are also wanting in the notice. The learned trial Judge has observed that it was not necessary for the Plaintiff to expressly state that the Union Government was responsible for the defaults of the military driver as its employer and that it was inevitable deduction from the preceding premises In my opinion this would not be a correct reason because unless the Plaintiff clearly discloses the grounds on which he seeks to hold the Respondent liable, the latter would not be in a position

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to meet the claim. In support of this contention the - Government pleader has relied upon the decision in the Secretary of State vs. Sukhdeo (I.L.R. 21 Allahabad, 341). In that case the police had seized certain property as the property of the Accused. One Sukhadev raised an objection about the ownership of the property but it was rejected. The article in question was sold and Sukhadev thereupon instituted the suit for damages. In the appeal it was contended that the plaint disclosed no cause of action and that the suit was liable to be dismissed on that ground. There also the plaint did not state the basis on which the Secretary of State was sought to be held - liable and after referring to the plaint their Lordships observed:

> " But in our view there is a preliminary question, that is, whether, on the face of the plaint any cause of action against the Secretary of State is even alleged by the Plaintiff. We have come to the conclusion that the plaint discloses no such cause of action. What it discloses is 'that in order to realise the fine imposed upon a third person, certain goods belonging to the Plaintiff were wrongfully seized by the police, and that, while these articles were in the custody of the Court, the Magistrate rejected an * application by the Plaintiff for - their release. That is the whole of what the plaint describes as the cause of action".

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In my opinion the facts of this case clearly support the Defendant's objection. My attention was also drawn to - another decision in Panchayati Akhara Maha Nirbani vs. The Secretary of State (I.L.R. 44 Allahabad, 573) which also supports the Defendant's contention. With the plaint as it stands it is difficult to say that either taken by - itself or in conjunction with the notice, it discloses any

cause of action against the Defendant. In view of these conclusions, I have to allow the appeal.

Order.

The appeal is allowed and the decree passed by the trial court is set aside. The Plaintiff's suit is dismissed with costs throughout.

31st December 1955. Sd. T.K. Tukol

District Judge, Kanara.

(Errors fine only)

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